



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 14 जुलाई, 2015/23 आषाढ़, 1937

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 2nd July, 2015

No: Sharm (A) 6-2/2014 (Awards) D/Shala.—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour

Court D/Shala on the website of the Department of Labour & Employment of the Government of Himachal Pradesh:—

	Case No:	Title of the Case		Date of Award/ Order
1.	232/14	President, M/S Inox Wind	Employer, M/S Inox Wind	24-02-2015
2.	90/14	Suresh Bala	Sh. Vijay Kumar & others	24-02-2015
3.	10/14	Khazan Singh	E.E.HPPWD, J/Nagar	26-02-2015
4.	24/15	Geeta Devi	E.E.HPPWD, J/Nagar	26-02-2015
5.	62/14	Jai Ram	E.E.HPPWD, J/Nagar	26-02-2015
6.	375/14	Bhuri Singh	E.E.HPPWD, J/Nagar	26-02-2015
7.	32/15	Jagdish Chand	E.E.HPPWD, J/Nagar	26-02-2015
8.	34/15	Bir Singh	E.E.HPPWD, J/Nagar	26-02-2015
9.	351/14	Kartar Singh	E.E.HPPWD, J/Nagar	09-03-2015
10.	355/14	Hans Raj	E.E.HPPWD, J/Nagar	09-03-2015
11.	394/14	Raghubir Singh	E.E.HPPWD, J/Nagar	09-03-2015
12.	51/13	Girish Shortry	Conservator of Forest	17-03-2015
13.	214/13	Sanjay Kumar	D.F.O. Bilaspur	23-03-2015
14.	180/13	Pan Dei	D.F.O. Killar	24-03-2015
15.	172/13	Naresh Kumar	D.F.O. Killar	24-03-2015
16.	218/13	Mouji Ram	D.F.O. Palampur	31-03-2015
17.	220/13	Atma Ram	D.F.O. Palampur	31-03-2015
18.	225/13	Suneel Kumar	D.F.O. Palampur	31-03-2015
19.	227/13	Gagan Singh	D.F.O. Palampur	31-03-2015
20.	229/13	Hari Kishan	D.F.O. Palampur	31-03-2015
21.	230/13	Anita Devi	D.F.O. Palampur	31-03-2015
22.	231/13	Jai Ram	D.F.O. Palampur	31-03-2015
23.	232/13	Deep Raj	D.F.O. Palampur	31-03-2015
24.	234/13	Balwant Singh	D.F.O. Palampur	31-03-2015
25.	237/13	Ashok Kumar	D.F.O. Palampur	31-03-2015
26.	129/14	Sunita Devi	D.F.O. Palampur	31-03-2015
27.	259/12	Jagat Ram Forest	Conservator of	24-04-2015
28.	139/13	Prem Chand	E.E.HPSEB, Dharmpur	25-04-2015
29.	140/13	Hem Singh	E.E.HPSEB, Dharmpur	25-04-2015
30.	141/13	Hari Singh	E.E.HPSEB, Dharmpur	25-04-2015

31.	109/12	Om Prakash	E.E.HPSEB, J/Nagar	29-04-2015
32.	238/13	Bishamber Singh	D.F.O. Palampur	29-04-2015
33.	233/13	Pritam Singh	D.F.O. Palampur	29-04-2015
34.	228/13	Kuldeep Singh	D.F.O. Palampur	29-04-2015
35.	239/13	Tara Chand	D.F.O. Palampur	29-04-2015
36.	219/13	Sanjay Kumar	D.F.O. Palampur	29-04-2015
37.	236/13	Rakesh Chand	D.F.O. Palampur	29-04-2015
38.	221/13	Rakesh Chand	D.F.O. Palampur	29-04-2015
39.	131/14	Ranjeet Singh	D.F.O. Palampur	29-04-2015
40.	235/13	Jaspal Singh	D.F.O. Palampur	29-04-2015
41.	222/13	Desh Raj	D.F.O. Palampur	29-04-2015
42.	128/14	Sandeep Rana	D.F.O. Palampur	29-04-2015
43.	224/13	Kalyan Chand	D.F.O. Palampur	29-04-2015
44.	125/14	Parkash Chand	D.F.O. Palampur	29-04-2015
45.	119/14	Meenakshi Sharma	D.F.O. Palampur	29-04-2015
46.	124/14	Meenakshi Sood	D.F.O. Palampur	29-04-2015
47.	126/14	Yash Pal	D.F.O. Palampur	29-04-2015
48.	127/14	Suneel Kumar	D.F.O. Palampur	29-04-2015
49.	130/14	Achhar Singh	D.F.O. Palampur	29-04-2015
50.	96/147	Shashi Pal Sharma	M/s MBD Printographics	27-04-2015
51.	184/13	Trishla Devi	Suresh Kumar & Others	27-04-2015
52.	287/14	Mamta Devi	D.M.Forest Corporation	22-04-2015
53.	374/14	Suresh Kumar	E.E.HPPWD, J/Nagar	04-05-2015
54.	223/13	Prakran Ram	D.F.O. Palampur	06-05-2015
55.	226/13	Kultar Chand	D.F.O. Palampur	06-05-2015
56.	240/13	Tilak Raj	D.F.O. Suket	12-05-2015
57.	191/15	Sukh Ram	E.E.HPPWD, J/Nagar	14-05-2015
58.	246/14	Mahender Singh	M/s GVK, EMRI, Solan	14-05-2015
59.	333/14	Rasilu Devi	E.E.HPPWD, J/Nagar	16-05-2015
60.	248/13	Rakesh Kumar	S.E.HPPWD, Shimla	23-05-2015
61.	245/13	Kamal Singh	M/s HN Steel Casting	23-05-2015
62.	24/13	Khem Raj	D.F.O. Lahaul	29-05-2015
63.	14/13	Shesh Ram	D.F.O. Lahaul	29-05-2015
64.	101/14	Rakesh Kumar	F.M. M/s Reinforced Soil	30-05-2015
65.	323/14	Ramesh Negi	E.Director M/s Surya R.	30-05-2015

66.	201/13	Kuldeep Singh	E.E. HPPWD, J/Nagar	30-05-2015
67.	274/14	Lata Devi	E.E. HPPWD, J/Nagar	30-05-2015
68.	275/14	Sumna Devi	E.E. HPPWD, J/Nagar	30-05-2015
69.	276/14	Prem Singh	E.E. HPPWD, J/Nagar	30-05-2015
70.	277/14	Nag Chand	E.E. HPPWD, J/Nagar	30-05-2015
71.	278/14	Santoshi Devi	E.E. HPPWD, J/Nagar	30-05-2015
72.	279/14	Swaru Ram	E.E. HPPWD, J/Nagar	30-05-2015
73.	280/14	Joginder	E.E. HPPWD, J/Nagar	30-05-2015

By order,
R. D. DHIMAN,
Pr. Secretary (Labour & Employment).

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 232/2014

The President/General Secretary, M/S Inox Wind Workers Union Basal, V.P.O. Basal,
District Una, H.P. *...Petitioner.*

Versus

The Employer, M/S Inox Wind Limited Basal, Industrial Area Basal, Tehsil & District Una,
H.P. *...Respondent.*

24-02-2015 Present: None for the petitioner.

Sh. Anish J.P. Adv. csl. for the respondent.

Sh. Manish Karol, Labour Officer-cum-Conciliation Officer, Una present in person.

Sh. Manish Karol, Labour Officer-cum-Conciliation Officer, Una has appeared in this Court in pursuance to notice clarifying the circumstances in which reference was made when the parties had already been settled the dispute. In his statement, said the Labour Officer has satisfactorily explained peculiar circumstances in which reference was made inadvertently from Shimla. However, has not pressed reference in view of the compromise Ex.P-A entered into between the Management and Union duly represented by Sh. Sandeep Kumar, then the General Secretary, Workers Union Basal. In view of the statement as stated above on record, the present claim is disposed off as withdrawn and thus the demands No. 1 to 8 raised vide demand notice dated 04-09-2013 of the President/General Secretary, M/S Inox Wind Workers Union Basal (Una) is finally settled between the parties who shall be bound by terms compromise Ex.P-A.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered as disposed off in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after needful completion.

Announced:

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 90/2014

Smt. Suresh Bala, w/o Shri Arun Kumar, V.P.O. Pragpur, Tehsil Dehra, District Kangra,
H.P. . . . *Petitioner.*

Versus

1. Shri Vijay Kumar, c/o M/S Tigaksha Metalics Pvt. Ltd., Plot No.16, Ram Nagar,
Industrial Area Gagret, Tehsil Amb, District Una, H.P (Contractor).

2. The Managing Director/Employer, M/S Tigaksha Metalics Pvt. Ltd., Plot No. 16, Ram
Nagar Industrial Area Gagret, Tehsil Amb, District Una, H.P. (Principal employer).

...Respondents.

24-02-2015 Present: None for the petitioner.

None for the respondent No. 1.

Sh. Rajesh Kosh, Law Officer for the respondent No. 2.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the petitioner /claimant (Smt. Suresh Bala) who is absent despite due service. It is 3.00 P.M. None appearance of petitioner despite service is indicative of the fact that she is not interested to pursue present reference and accordingly reference is disposed of. Reference is answered in the aforesaid terms. The parties to bear their own costs. Let copy of the order be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 10/2014

Shri Khazan Singh s/o Shri Kalu Ram, r/o Village Partain, P.O. Gangoti, Tehsil Joginder Nagar, District Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.*Respondent.*

26-02-2015 Present: Sh. N.L. Kaundal, A.R. for the petitioner.

None for the respondent.

Letter of 1906authorized1906on has been filed by the 1906authorized representative for the petitioner which be placed on record. Heard. Authorised representative for the petitioner has stated at bar that industrial dispute raised by present petitioner has already been decided by this Court in pursuance to reference made by the government. Thus, petitioner now does not want to proceed with this present reference and has prayed its dismissal. Accordingly, 1906authorized representative for the petitioner in his statement on record has not pressed his claim besides prayed for its dismissal. The present reference received is, thus, dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. File, after due completion be consigned to the Record Room.

Announced:
26.02.2015

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 24/2015

Smt. Geeta Devi w/o Shri Kanshi, r/o Village Shilah, P.O. Khazoor, Tehsil Joginder Nagar, District Mandi, H.P. ...*Petitioner.*

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.

. . .Respondent.

26-02-2015 Present: Sh. N.L. Kaundal, A.R. for the petitioner.

None for the respondent.

Letter of authorisation has been filed by the authorised representative for the petitioner which be placed on record. Heard. Authorised representative for the petitioner has stated at bar that industrial dispute raised by present petitioner has already been decided by this Court in pursuance to reference made by the government. Thus, petitioner now does not want to proceed with this present reference and has prayed its dismissal. Accordingly, authorised representative for the petitioner in his statement on record has not pressed her claim besides prayed for its dismissal. The present reference received is, thus, dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. File, after due completion be consigned to the Record Room.

Announced:
26.02.2015

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 62/2014

Sh. Jai Ram s/o Shri Dagi Ram, r/o Village Soun, P.O. Karshal, Tehsil Joginder Nagar, District Mandi, H.P.

. . .Petitioner.

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.

. . .Respondent.

26-02-2015 Present: Sh. N.L. Kaundal, A.R. for the petitioner.

None for the respondent.

Letter of authorisation has been filed by the authorised representative for the petitioner which be placed on record. Heard. Authorised representative for the petitioner has stated at bar that industrial dispute raised by present petitioner has already been decided by this Court in pursuance

to reference made by the government. Thus, petitioner now does not want to proceed with this present reference and has prayed its dismissal. Accordingly, authorised representative for the petitioner in his statement on record has not pressed his claim besides prayed for its dismissal. The present reference received is, thus, dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. File, after due completion be consigned to the Record Room.

Announced:
26.02.2015

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 375/2014

Shri Bhuri Singh s/o Sh. Bhekha Ram, r/o Village Gadhyara, P.O. Golwan, Tehsil Joginder Nagar, District Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. . . .*Respondent.*

26-02-2015 Present: Sh. N.L. Kaundal, A.R. for the petitioner.

None for the respondent.

Letter of authorisation has been filed by the authorised representative for the petitioner which be placed on record. Heard. Authorised representative for the petitioner has stated at bar that industrial dispute raised by present petitioner has already been decided by this Court in pursuance to reference made by the government. Thus, petitioner now does not want to proceed with this present reference and has prayed its dismissal. Accordingly, authorised representative for the petitioner in his statement on record has not pressed his claim besides prayed for its dismissal. The present reference received is, thus, dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. File, after due completion be consigned to the Record Room.

Announced:
26.02.2015

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 32/2015

Shri Jagdish Chand s/o Shri Lakhu Ram, r/o Village Patrain, P.O. Gangoti, Tehsil Joginder Nagar, District Mandi, H.P. . . .*Petitioner.*

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. . . .*Respondent.*

26-02-2015 Present: Sh. N.L. Kaundal, A.R. for the petitioner.

None for the respondent.

Letter of authorisation has been filed by the authorised representative for the petitioner which be placed on record. Heard. Authorised representative for the petitioner has stated at bar that industrial dispute raised by present petitioner has already been decided by this Court in pursuance to reference made by the government. Thus, petitioner now does not want to proceed with this present reference and has prayed its dismissal. Accordingly, authorised representative for the petitioner in his statement on record has not pressed his claim besides prayed for its dismissal. The present reference received is, thus, dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. File, after due completion be consigned to the Record Room.

Announced:
26.02.2015

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 34/2015

Sh. Bir Singh s/o Shri Sohan Singh, r/o Village Patrain, P.O. Gangoti, Tehsil Joginder Nagar, District Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.*Respondent.*

26-02-2015 Present: Sh. N. L. Kaundal, A.R. for the petitioner.

None for the respondent.

Letter of authorisation has been filed by the authorised representative for the petitioner which be placed on record. Heard. Authorised representative for the petitioner has stated at bar that industrial dispute raised by present petitioner has already been decided by this Court in pursuance to reference made by the government. Thus, petitioner now does not want to proceed with this present reference and has prayed its dismissal. Accordingly, authorised representative for the petitioner in his statement on record has not pressed his claim besides prayed for its dismissal. The present reference received is, thus, dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. File, after due completion be consigned to the Record Room.

Announced:
26.02.2015

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. 351/ 2014

Sh. Kartar Singh s/o Shri Sher Singh, r/o Village Draman, P.O. Golwan, Tehsil Joginder Nagar, District Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P.

....Respondent.

09-03-2015 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, D.D.A. for the respondent.

The case called on several times but none has appeared on behalf of the petitioner despite due service. It is 11.40 a.m. Be awaited and it be put up after lunch hours.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

09-03-2015 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, D.D.A. for the respondent.

The case again called on several times but none has appeared on behalf of the petitioner. It is 3.20 P.M. None appearance of petitioner despite service is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution. According, reference is answered in the aforesaid terms. The parties to bear their own costs. Let copy of the order be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
09-03-2015

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. 355 / 2014

Sh. Hans Raj s/o Shri Sant Ram, r/o Village Joki, P.O. Drahal, Tehsil Joginder Nagar,
District Mandi, H.P.Petitioner.

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P.
....Respondent.

09-03-2015 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, D.D.A. for the respondent.

The case called on several times but none has appeared on behalf of the petitioner despite due service. It is 11.35 a.m. Be awaited and it be put up after lunch hours.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

09-03-2015 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, D.D.A. for the respondent.

The case again called on several times but none has appeared on behalf of the petitioner. It is 3.15 P.M. None appearance of petitioner despite service is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution. According, reference is answered in the aforesaid terms. The parties to bear their own costs. Let copy of the order be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
09-03-2015

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. 394 / 2014

Sh. Raghuvir Singh s/o Shri Kanhiya Ram, r/o Village Sagnehar, P.O. Chauntra, Tehsil
Joginder Nagar, District Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P.
....*Respondent.*

09-03-2015 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, D.D.A. for the respondent.

The case called on several times but none has appeared on behalf of the petitioner despite due service. It is 11.30 a.m. Be awaited and it be put up after lunch hours.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

09-03-2015 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, D.D.A. for the respondent.

The case again called on several times but none has appeared on behalf of the petitioner. It is 3.10 P.M. None appearance of petitioner despite service is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution. According, reference is answered in the aforesaid terms. The parties to bear their own costs. Let copy of the order be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
09-03-2015

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 51/2013
Date of Institution : 13.6.2013
Date of decision : 17.03.2015

Shri Girish Shrotry s/o Shri Ravi Dutt Shrotry, H. No.81, Ward No.3, Akhara Bazar, Kullu, Distt. Kullu, H.P. *...Petitioner.*

Versus

1. The Conservator of Forest, Forest Circle, Kullu, Distt. Kullu, H.P.
2. The Divisional Forest Officer, Forests Division Kullu, Distt. Kullu, H.P. *....Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Girish Shrotry S/O Sh. Ravi Dutt Shrotry, H. No. 81, Ward No.3, Akhara Bazar, Kullu, H.P. by i) The Conservator of Forest, Forest Circle, Kullu, Distt. Kullu, H.P. ii) The Divisional Forest Officer, Forests Division Kullu, Distt. Kullu, H.P. w.e.f. March, 2006 as per reply of employer/ w.e.f. 01.9.2007 as alleged in the demand notice by the workman, without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified? If not, what amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. In pursuance to receipt of reference from appropriate Government, notice was issued to the petitioner who filed his statement of claim stipulating therein that he was appointed as beldar on daily wages on 10.03.1999 in Forest Department, Kullu Division where he continued working there till 31st August, 2007. It is specifically alleged that he was paid wages of an unskilled beldar but he was actually performing the duties of computer/wireless operator and that respondents without any notice orally terminated his service on 01.09.2007 retaining other junior workers. It is alleged that respondents ignored his legitimate rights under the labour laws and resorted to unfair labour practice. Averments made in the statement of claim categorically provides that respondents did not prepare any seniority list and gave fictional breaks so as to deprive petitioner benefits of having worked continuously for 240 days in a year. It is alleged that respondents had wrongly shown that petitioner had worked till 2006. The petitioner prayed for his re-engagement along-with all consequential benefits such as seniority and back wages.

3. Repudiating the allegations as contained in the statement of claim, respondents no.1 and 2 jointly filed reply inter alia taken preliminary objections of maintainability, claim of the petitioner being bad on account of delay and laches, the petitioner having failed to approach this Court with clean hands, having suppressed the material facts. On merits, denied that petitioner was engaged as a wireless operator/computer operator as there was no sanctioned post of such nature in the forest department. However, admitted that he was engaged as a daily wager on bill basis as per availability of funds during the period intervening from 3/99 to 2/96 to carry out the works and mandays chart had also been annexed with the reply. It is claimed that petitioner had worked on bill basis in Kullu Forest Division who left the work of daily wager of his own sweet will and that respondent had never disengaged petitioner rather, vide notice no.11568 dated 8th March, 2011 another notice no.11882 dated 22nd March, 2011, the petitioner was asked to report to Range Officer, Range Office Kullu for plantation and nursery work but he did not turn up for the work at the relevant time. It is claimed that vide legal notice dated 25.4.2008, the petitioner had been representing for his regularization as daily wager who could not be regularized as he had not fulfilled the requisite criteria, asserted specifically that petitioner had not completed 240 days in any of years he worked with the respondent no.2. It is specifically asserted that no provision of the Industrial Disputes Act, 1947 has been violated by the respondents. It is also claimed that as per information received from the field staff petitioner is/was gainfully employed as he was running a cyber café. Accordingly, claim petition was sought to be dismissed. The reply filed by the respondents was supported by the affidavit of respondent no.2.

4. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition, admitted that petitioner did not leave the job of his own rather, respondent had called him and told that they did not have funds and as and when the funds were available he would be called for job.

5. From the contentions raised following issues were framed for determination on 14.11.2013:

1. Whether the termination of services of the petitioner by the respondent w.e.f. March, 2006 or 01-09-2007 is illegal and unjustified as alleged? ...*OPP.*
2. Whether the claim petition is not maintainable in the present form? ...*OPR.*
3. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ... *OPR.*
4. Whether the petition is hit by the vice of delay and laches as alleged? If so, its effect? ...*OPR.*
5. Relief.

6. I have heard the Authorized Representative representing petitioner and Id. Dy. D.A. for the respondents and have gone through the case file carefully.

7. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : Un-pressed

Issue No. 4 : No

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE No. 1

8. Relationship of petitioner being workman having worked with the respondents as an unskilled beldar on daily wages is not in dispute. The grievance of petitioner is that despite having worked for more than 240 days his services have been illegally terminated without serving any notice envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and at the same time, one month's wages as required to be paid by respondents to petitioner was also not given. The case of the petitioner remains that he joined respondents in Kullu Division on 10th March, 1999 and worked with them till 31st August, 2007 whereas, the case of respondents remain that he did not actually work till 2007 rather the petitioner is stated to have worked till 2006 but petitioner had not completed 240 days in any of these years and was thus not entitled to any protection envisaged under Section 25-F of the Act. To resolve the controversy on this aspect, it would be relevant to refer to documentary evidence as well as contents of affidavits of both the parties as they have supported of their respective pleas. In his affidavit under Order 18 Rule 4 CPC, the petitioner has asserted that he has worked for 240 days and remained employed with the respondents as daily wager beldar from 10.3.1999 till 31st August, 2007 but actually he was performing the duties of computer/wireless operator but wages paid to him were of an unskilled labourer. The petitioner has claimed that respondents had resorted to unfair labour practice firstly by engaging him as unskilled labourer and getting the work of computer/wireless operator although he was paid wages of an unskilled labourer and secondly his name was not reflected in the seniority list and his seniority was disturbed by giving fictional breaks and thus there was violation of Section 25-F. Not only this, petitioner has also claimed that respondents while terminating his services had ignored mandate of Section 25-H of the Industrial Disputes Act which postulates that the workman who came to last was to go first in the matter of retrenchment.

9. In support of his contention, petitioner has relied upon Ex. PW1/B which is the list of daily wager of Kullu Forest Division as it stood on 1st January, 2012. With the aid of this document, petitioner has made endeavor to establish that Smt. Babita Devi, Anurag and Smt. Rewati Devi were made daily wagers from part time worker in the years 2008 and 2009 respectively, whereas petitioner himself had joined in the year 1999 and these persons ought to have been removed first while retrenching instead of petitioner which has not been done so in this case. Microscopic examination of this document would establish that Smt. Babita Devi, Anurag and Smt. Rewati Devi had been working as part time workers since January 1992, April 1996 and April, 1998 and Smt. Babita Devi was converted on daily wages basis from part time worker w.e.f.

24.7.2008, whereas Anurag was also part time worker who made on daily wages from 21.12.2009 and Smt. Rewati Devi who too was part time worker was converted on daily wages basis on 12/2009. Although Authorized Representative of the petitioner contended that petitioner was appointed earlier and with that analogy, three persons as stated above were junior to him but his services have been terminated by oral notice in violation of provisions of Industrial Disputes Act. Ass noted above that Smt. Babita Devi, Anurag and Smt. Rewati Devi had been engaged in the year 1992, 1996 and 1998 respectively, these persons cannot be stated to be junior in service to petitioner to establish the fact that the services of these part time workers were converted as daily wager in the year 2008 and 2009 as their seniority is to be reckoned from the date of their joining and not when they were converted from part time worker to daily wager. Thus, it would be unsafe to conclude that petitioner was senior in service despite being appointed as daily wager on 10.3.1999 from Smt. Babita Devi, Anurag and Smt. Rewati Devi. Be it noticed that Authorized Representative while cross examining RW1 had not put even single question disputing the correctness of Ex. PW1/B the seniority list which tantamounts to accepting correctness of seniority list. The only question which has been asked to RW1 Shri B.L. Negi is that the name of petitioner was not included in the seniority list who clarified by stating that no seniority list had been prepared after 1998. Thus, for aforesaid reasons, there is no substance in the plea of petitioner that respondents had violated the provisions of Section 25-H of the Act.

10. It is settled proposition of law that for seeking the protection of Sections 25-G and 25-H of the Act, the requirement of having completed 240 days is not a condition precedent as has been held by the Hon'ble Supreme Court in Central Bank of India vs. S. Satyam, 1996 (5) SCC 419 and Harjinder Singh vs. Punjab State Warehousing Corporation, AIR 2010 SC 1116. In HP State Electricity Board vs. Shri Charan Dass 2012(1) Him. L.R. (DB) 320, the respondent failed to establish that the petitioner has abandoned the job of his own free will and the respondent retained the persons junior to the petitioner in service and it was the case of the respondent itself that no person junior to the petitioner save and except those who were ordered to be reinstated by the Court, were retained in service. In such circumstances, it was held by the Hon'ble High Court of H.P. that the plea of the respondent itself reveals that the persons junior to the petitioner have been retained in service and as such the respondent has violated the provisions of Sections 25-G and 25-H of the Act and the completion of 240 days by the workman in a calendar year is not required for seeking the protection under Sections 25-G and 25-H of the Act.

11. In so far as the claim of the petitioner in the case in hand is concerned that he had worked for more than 240 days and there was fictional break given in his services by the respondents so as to deprive him to the benefits of Section 25-B of Industrial Disputes Act it would be appropriate to refer to voucher-wise detail of wages of the petitioner from March 1999 to February, 2006. Perusal of Ex. RW1/B clearly shows that the petitioner had worked for 225 days in the year 1999, 204 days in the year 2000, 170 days in the year 2001, 175 days in the year 2002, 179 days in the year 2003, 61 days in the year 2004, 61 days in the year 2005 and 27 days in the year 2006 and there was no period of working in the year 2007. This document clearly belies the claim of the petitioner that he had worked for more than 240 days ever since his engagement with the respondent. Be it noticed no other workman who worked with petitioner had been examined who could have supported plea of petitioner and it is the uncorroborated testimony of petitioner which too does not inspire confidence as mandays chart Ex. RW1/B shows that petitioner had worked only for 61 days in 2004, 61 days in 2005 and 27 days in 2006 and there is no working of petitioner in 2007. The petitioner has also made futile attempt to connect himself having worked with the respondents by referring to the copies of cash account of Divisional Forest Officer Kullu Forest Division for months of 2/2006, 3/2006, 4/2006, 5/2006, 6/2006, 7/2006, 8/2006, 9/2006, 10/2006, 11/2006, 12/2006, 1/2007, 2/2007, 4/2007, 5/2007, 6/2007 and 7/2007 showing that name of petitioner was printed in the bottom of these cash accounts but by proving of printing name of petitioner which too is not complete as it is without identification these could not be read in

evidence to have been prepared by petitioner only or say that petitioner had also worked in 2007. Moreover, these documents do not bear any signature of petitioner and as such it cannot be stated that the petitioner had prepared these documents who remained employed with the respondents not only in the year 2006, but also in the year 2007. Thus, cash account vouchers bearing word "Girish" on the bottom of documents does not establish that the said petitioner had worked with the respondents and remained their employee as nothing has been brought on record to prove that the petitioner was made any payments for this period. Secondly, while issuing legal notice R-IV at the behest of the petitioner, the counsel issuing notice there was stipulation qua the period till when the petitioner remained employed i.e. petitioner had worked till 25.4.2008 and when the notice was issued to the respondents the petitioner was working as computer operator. It would be imaginable that despite industrial dispute, petitioner continued working as computer operator. More so, when it is not the case of the petitioner that he has worked for 240 days and he claimed to have worked till 31st August, 2007. Thus, the plea so made in the notice R-IV gets falsified from averments made in the claim petition. In view of the foregoing discussion, it is held that the petitioner had failed to establish that he had worked with the respondents continuously for a period of 240 days in a year preceding his termination and thus the respondents were not under any legal obligation to have resorted to procedure of Section 25-F of the Industrial Disputes Act. In absence of reliable evidence qua petitioner being senior to Anurag, Smt. Babita and Smt. Rewati, it cannot be stated that provisions of Section 25-G and Section 25-H were not followed and that these provisions were violated in any manner rather it has come that petitioner was junior to all the three and in the matter of retrenchment, he being junior most was to go first and thus no provision of Industrial Disputes Act was violated. For the aforesaid reasons, points in hand answered in the negative.

ISSUE NO. 2

12. Ld. Dy. D.A. for the respondents has argued with vehemence that the claim petition is not maintainable. In support of his contention he has contended that petitioner was not given any fictional break and thus case under Section 25-F as well as the provisions of Sections 25-G and H of the Industrial Disputes Act was not made out. Since respondents have not disputed that the petitioner being their daily wage workman petitioner could legitimately raised his grievances before the Tribunal and merely because petitioner has failed to establish having worked for 240 days in a calendar year preceding his termination and that at the same time he has failed to prove having been disengaged and not offered opportunity of reemployment, thereafter, as is required under law, suffice would be to state here that petitioner could maintain his claim petition on both these counts and merely because he has failed to establish his claim the same would not ipso facto establish that the claim petition is not maintainable. Accordingly, point in hand is answered in favour of the petitioner and against the respondents.

ISSUE NO. 3

13. Unpressed.

ISSUE NO. 4

14. Ld. Dy. D.A. has contended with vehemence that petitioner is not entitled to any relief in view of delay and laches. On the other hand, Authorized Representative of representing petitioner has disputed the correctness of submission so made by Ld. Dy. D.A. It is settled law that in case a dispute is referred to this Tribunal for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief as has been held by our own Hon'ble High Court in Bhatag Ram's case (supra). In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services

were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In *Deepa Ram vs. State of H.P. and Ors.*, 2005 (1) Himachal Law Journal 248, there was a delay of 12 years. In *Ramesh Chand vs. Union of India*, CWP No. 812 of 2000, there was a delay of 9 years. In CWP No. 95 of 2000 titled as *Divisional Manager vs. Mohinder Kumar*, there was a delay of 14 years. In *Naginder Kumar vs. HPSEB and anr.* 2008 (1) SLJ (H.P.) 425, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the *Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors*, AIR 1964 SC 752, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice.

15. No material has been placed on record by the respondents to establishing that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case. As such, the petitioner cannot be denied relief claimed for delay and laches and thus, point in hand is answered in negative in favour of the petitioner and against the respondents.

RELIEF (ISSUE NO.5)

16. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. However, the parties are directed to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of March, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 214/13
Date of Institution : 20.11.2013
Date of decision : 23.03.2015

Shri Sanjay Kumar s/o Shri Damodar Singh, r/o Village & P.O. Malyawar, Tehsil Ghumarwin, District Bilaspur, H.P. ...Petitioner.

Versus

The Divisional Forest Officer, Bilaspur Division, Distt. Bilaspur, H.P.

....Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Sanjay Kumar S/O Sh. Damodar Singh, R/O Village & PO Malyawar, Tehsil Ghumarwin, Distt. Bilaspur, H.P. by The Divisional Forest Officer, Bilaspur Division, H.P. w.e.f. 21.9.2012 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what benefits, including reinstatement, amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. Brief facts as enumerated in the claim petition reveal that petitioner had been engaged by respondent at Nursery Beat Tihra, P.O. Malaywar, Tehsil Sadar, Distt. Bilaspur as daily wage worker in the year 2009 who worked with respondent till 21st September, 2012 when his services were illegally terminated without any notice and compliance of Section 25-N of the Industrial Disputes Act, 1947. Averments made in the claim petition further reveal that the services of petitioner was more than satisfactory who had never been served with any chargesheet or show cause notice by his employer till termination of his services which is illegal and void entitling petitioner to full back wages and other consequential benefits including seniority and continuity in service. It is claimed that termination of services of petitioner falls in the definition of retrenchment under Section 2(oo) of the Industrial Disputes Act. The grievance of the petitioner also remains that certain junior workers were retained in service and his services had been terminated ignoring and violating the principle of ‘first come last go’ and thereby the respondent had violated mandate of Section 25-G and Section 25-H of the Act. Claiming to have remained unemployed ever since his illegal termination, the petitioner has claimed full back wages along-with all incidental benefits. Moreover, the above establishment was still continuing and work was going where workers were regularly engaged by respondent. Accordingly, petitioner has claimed benefits including back wages as stated above from the respondent.

3. The respondent repudiated claim by filing reply inter alia taking preliminary objections of maintainability, petition being bad on account of delay and laches. On merits denied petitioner being employed from 2009 to 31st September, 2012. It is asserted that the petitioner was engaged as “seasonal worker” in Tihara Forestry who was not daily wage on seasonal forestry work like fire protection and nursery as per availability of works and funds, although admitted that petitioner had served the respondent department till 21st September, 2009. It is also contended that petitioner did not work even a single day in the year 2010. The petitioner worked for 61 days in the year 2009 and in the year 2011 he (petitioner) had worked 65 days whereas in 2012 he worked for 76 days. The respondent in its reply had maintained that the petitioner had never completed 240 days of work in any calendar year and that he was a seasonal worker engaged for the purpose of fire protection work only. Not only this, petitioner had been employed with the undertaking that he was ready to serve in the department as per availability of work and he would not claim any seniority at the time of his initial engagement as seasonal worker in the year 2009. It is denied that any junior to the petitioner was retained by the respondent and thus principle of ‘last come first go’ was not ignored. Not only this, petitioner is stated to have left work of his own and his services were never

terminated by the respondent and at the same time he denied that petitioner has no source of income for his livelihood. Rather, he had own agricultural work and was gainfully employed. Accordingly, denying all allegations qua violation of Sections 25-G and H it is asserted that petitioner was not entitled to any relief and thus the petition was sought to be dismissed in the interest of justice.

4. No rejoinder was filed as is evident from zimni orders dated 13th March, 2014.

5. To prove his case, petitioner has sworn his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PA application under section RTI Act, Ex. PB mandays chart concerning petitioner, Ex. PC mandays chart of Garja Ram, Mark-A copy of affidavit submitted by petitioner to the forest department at the joining of service which has also been filed by the respondent as annexure-R-9 and closed the evidence. On the other hand, repudiating the evidence led by petitioner, respondent has examined Shri H.K. Sarwata, the then Divisional Forest Officer, Forest Division Bilaspur tendered/proved Ex. RW1/A, affidavit of the above named forest officer Ex. RW1/B, affidavit which is same as Ex. R-9. Exts. RW1/C and D, copies of muster rolls, Exts. RW1/E to RW1/F copies of wage bills and closed the evidence.

6. I have heard the Authorized Representative representing petitioner and ld. Dy. D.A. for respondent and have gone through the case file carefully.

7. From the contentions raised, issues were framed by my ld. predecessor for determination on 13.3.2014 which are as under:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 21.09.2012 is/was illegal and unjustified as alleged? . . .*OPP.*
2. Whether the petitioner has a cause of action? . . .*OPP.*
3. Whether the petition is not maintainable in the present form? . . .*OPR.*
4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? . . .*OPR.*
5. Relief.

8. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : Impressed

Issue No.4 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

9. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously with repetition of evidence.

10. The case of the petitioner simplicitor is that he was employed as daily wager on 1st January, 2009 who continued to work till 20th September, 2012 continuously and that vide verbal order, he was disengaged by respondent on 21st September 2012. To prove his claim, he has deposed on oath and filed affidavit Ex. PW1/A stipulating therein the time for which he remained employed with the respondent and was disengaged by a verbal order. To appreciate the claim of the petitioner being continuous employed for 240 days in the preceding years when he remained employed, it would be apt to refer to mandays chart Ex. RW1/J, which clearly stipulates that petitioner had been engaged on 01.4.2009 on muster roll prepared till 31st May, 2009 when he worked for 30 days and 31 days respectively and thereafter, he was made payment on the basis of various bills but he had never worked 240 days in a given year. As in the years 2009 and 2011, he (petitioner) worked for 61 and 65 days. He did not work in the year 2010 and in the year 2012 he worked for 76 days. The plea of respondent remains that petitioner was a seasonal worker and Id. Dy. D.A. representing the respondent has relied upon Ex. PA information supplied to petitioner under the RTI Act which showed that petitioner as well as one Garja Ram s/o Shri Lahnoo Ram had worked as a seasonal labourer but certainly plea of petitioner being seasonal worker is not established for reasons stated hereinafter.

11. Admittedly, petitioner while being engaged was appointed without any appointment letter by which it could be inferred that his engagement was only for seasonal work. Even the muster roll relied upon by the respondent Ex. RW1/C and Ex. RW1/D nowhere stipulates that he was a seasonal worker. Even subsequent bills Exts. Ex. RW1/E to RW1/I also do not support the plea of respondent qua petitioner being a seasonal worker. Id. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble High Court of Himachal Pradesh titled as Block Development Officer, Pragpur vs. Yoginder Kumar & Ors. reported in 2008 LLR 763 in which the Hon'ble Court has relied upon the judgment of Hon'ble Supreme Court titled as S.M. Niljekar and others vs. Telecom, District Manager, Karnataka, 2003(97) FLR 608. In this judgment Hon'ble Apex Court has held under what circumstances termination of service of workmen engaged in the scheme or project may not amount to retrenchment. It was also held that if the workman had been employed in a project, it would have spelled out by issuing a separate appointment letter informing them that their employment was co-terminus with the project or in the alternative even on the muster roll this fact that the employment is in project could be incorporated. The observations of Hon'ble Court clearly postulates the necessity of apprising workman about the purpose for which he was engaged by a written letter or stipulation on the muster roll which has not been done by the respondent in this case. Since there was no contract entered into by the employer with workman and that workman had not been put to notice at any stage in writing that their employment was in project as has been held by Hon'ble High Court in Yoginder Kumar's case (supra) and with same analogy without any written letter or putting workman notice of employment as seasonal worker, it would be unsafe to hold that petitioner was seasonal worker. As such, bald plea of the respondent that the petitioner was engaged for seasonal work only merits rejection rather the respondent in not maintaining the seniority list as admitted by RW1, the then Divisional Forest Officer, Bilaspur manifestly shows unfair labour practice and such plea seems to have been taken that with the object to deny the claim of the petitioner. As such, it is held that petitioner has although failed to prove to have worked for 240 days, yet he is held to be not seasonal worker as contended by respondent.

12. Enough has been emphasized by Id. Dy. D.A. that petitioner had given affidavit in which he had undertaken to work as daily wager for short duration and in this affidavit petitioner had also declared that he would not claim any seniority if respondent removed him from service if not found satisfactory and that the petitioner would not approach any Court or institute case for redressal of his grievance on this score. It may be pertinent to mention here that this affidavit is not legally attested document at the same time it does not bear any date of its execution so it cannot be enforced against petitioner. Otherwise, also with the aid of such document rights of workman cannot be defeated. Thus, with the aid of Ex. RW1/B respondent cannot derive any benefits and the

same would not eclipse the rights of the petitioner. More so, when the petitioner has also filed affidavit that respondent was always satisfied with his work as he was never given any show cause notice or any charge-sheet. Thus, in absence of any such evidence, affidavit Annexure R-IX cannot be used against petitioner so as to terminate his services.

13. In so far as the plea of petitioner that respondent had violated the mandate of Sections 25-G and 25-H of the Industrial Disputes Act, it would be apt to mention here that RW1 Shri H.K. Sarwata while stepping into the witness box has admitted in unequivocal terms that he did not know if 15 workers who were junior to petitioner were employed. He has further stated Sunder Ram was junior to the petitioner as enumerated in mandays chart Ex. PB. Version of respondent RW1 in cross-examination thus supports the plea of petitioner. He has admitted that Garja Ram remained employed with forest department whose name was highlighted in the mandays chart. Perusal of this Ex. PC shows that Garja Ram had not worked in the years 2009, 2010, 2011 and 2012 and was engaged on 16.4.2013 and worked till 15.6.2013 for about 61 days which establish that Garja Ram was subsequently appointed and per the affidavit of the petitioner on which he has not been cross-examined that Garja Ram was junior to petitioner and was engaged much after his termination but before engaging junior persons petitioner was not issued any notice as was required under Section 25-H of Industrial Disputes Act as RW1 has admitted that according to record available in the office no letter was issued to petitioner before engaging Garja Ram in 2013. At the same time, plea of the respondent that respondent had not disengaged petitioner who himself had left the job also merits rejection as no evidence on record was led by respondent showing that any disciplinary proceedings was initiated against the petitioner qua his absence or that any notice was served upon him calling to join his duties. Be it noticed that RW1 has also admitted that no compensation was paid to the petitioner which clearly shows that neither any notice nor compensation in lieu of wages was given to the petitioner as required of Industrial Disputes Act.

14. To substantiate his claim for wrongful retrenchment under Section 25- G and Section 25-H of Industrial Disputes Act even if the petitioner had failed to establish that he did not prove to have completed 240 days in a calendar year yet evasive reply of the respondent RW1 that he could not tell if there are 20 persons junior to the petitioner who were still engaged clearly showed falsity of defence so raised or that RW1 was pleading ignorance qua material fact which he ought to have known. Thus, from the deposition made by RW1, respondent is held to have certainly did not adhered to mandatory provision of 'last come first go' envisaged under Section 25-G and thus it appears that entire exercise qua disengagement of the worker was on the basis of hire and fire. Even if, the petitioner had not completed 240 days, the petitioner was entitled protection under Section 25-G of Industrial Disputes Act. Since the disengagement of the petitioner was against the mandate of Section 25-G, respondent was required to issue notice to the petitioner before engaging new workman. Even respondent has failed to prepare any seniority list reflecting name of petitioner as admitted by RW1 which is certainly unfair labour practice. In view of the foregoing discussions, issue no. 1 is decided holding that the petitioner had been illegally and wrongfully disengaged by the respondent without following or complying the mandate of Section 25-G of the Industrial Disputes Act.

15. Ld. Dy. D.A. during the course of argument has referred to cross-examination of petitioner PW1 in which he had admitted that after his disengagement, he had been residing with his brother and cultivated the land besides the land which is with brother was inherited from father. This admission clearly shows that petitioner was engaged who had reasonable earning from cultivation of land and thus he cannot stated to have been lawfully engaged. As such, I see force in the argument of Dy. D.A. representing respondent that petitioner is not entitled any back wages who was gainfully employed in agricultural activities after his disengagement. Issue in question is decided accordingly. In view of foregoing discussion, it cannot be stated that the petitioner had no cause of action and thus issue no.2 is answered in negative in favour of petitioner and for similar

reasons issue no.1 decided holding that termination of petitioner is bad, illegal and unjustified in view of violation of Sections 25-G and 25-H of Industrial Disputes Act.

ISSUE NO. 3

16. This issue was not pressed by Id. Dy.D.A. at the time of arguments which is decided unpressed in favour of petitioner and against respondent.

ISSUE NO. 4

17. Ld. Dy. D.A. has contended with vehemence that petitioner is not entitled to any relief in view of delay and laches. On the other hand, Authorized Representative of representing petitioner has disputed the correctness of submission so made by Id. Dy. D.A. It is settled law that in case a dispute is referred to this Tribunal for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief as has been held by our own Hon'ble High Court in Bhatag Ram's case (supra). In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248, there was a delay of 12 years. In Ramesh Chand vs. Union of India, CWP No. 812 of 2000, there was a delay of 9 years. In CWP No. 95 of 2000 titled as Divisional Manager vs. Mohinder Kumar, there was a delay of 14 years. In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice.

18. No material has been placed on record by the respondents to establishing that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case. As such, the petitioner cannot be denied relief claimed for delay and laches and thus, point in hand is answered in negative favour of the petitioner and against the respondent.

RELIEF (ISSUE NO.5)

19. As a sequel to my findings on the issues no. 1 to 4, the reference/claim petition is partly allowed and respondent is hereby directed to reengage the petitioner forthwith, who shall be entitled to seniority and continuity from the date of his illegal termination, however, without back wages. Parties to bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of March, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 180/2013
Date of Institution : 17.10.2013
Date of decision : 24.03.2015

Smt. Pan Dei w/o Shri Mahender Singh, r/o Village Parmas, P.O. Killar, Tehsil Pangi,
District Chamba, H.P. *...Petitioner.*

Versus

The Divisional Forest Officer, Pangi Forest Division, Killar, District Chamba, H.P.
....Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Pan Dei, W/O Shri Mahender Singh, R/O Village Parmas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. during 1996 to 2006 by the Divisional Forests Officer, Pangi Forest Division, Killar, District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. Brief facts as set up in the claim petition reveal that petitioner was engaged by respondent in April, 1996 in Range Killar on muster roll, on daily waged basis for which no appointment order was given while engaging her in service. The petitioner claimed to have worked till 2011 when her services were illegally terminated and that from the year 1996 till 2010, respondent had given fictional breaks so that the petitioner could not complete 160 days in a calendar year so that her services are not treated in continuous service required per Govt. notification providing for regularization in Pangi Sub Division falling in District Chamba (HP). Averments made in the claim petition further that several persons working along-with petitioner

had been engaged without being given any breaks. Although, even at the time of giving fictional breaks to the petitioner from the year 1996 onwards, the principle of 'last come first go' had not been followed by respondent as the persons junior to her namely Man Singh who was appointed in 1996, Kewal Ram in 1997 and Janam Singh in 1998 had been engaged by the respondent without breaks and thus, respondent violated the provisions of Section 25-G of the Industrial Dispute Act, 1947 (hereinafter referred to as the Act). Claiming that all the above named workmen had been regularized and petitioner was deliberately ignored by respondent giving fictional breaks with ulterior motive so that petitioner is not regularized despite having complete requisite number of days in 12 calendar months in preceding seven years, it is alleged that even at the time of termination of the services of petitioner department had not given any notice and at the same time, no inquiry had been conducted prior to her retrenchment. Thus, the act of respondent in terminating of services of petitioner was null and void and ab-initio. It is alleged that consequent upon the termination of the services of petitioner in November 2013, petitioner has raised demand against the respondent department for which the copy had been forwarded to Labour Officer, Chamba for necessary action and during the conciliation, the matter was not settled amicably and the report under Section 12(4) of the Act has been referred to appropriate Govt. for making reference. Even during the pendency of dispute before conciliation officer as well as in this Court, the services of petitioner had been engaged and disengaged on account of fictional breaks given by the department without taking permission under Section 33-C (2) of the Act and lastly the services of petitioner had been disengaged on account of fictional break given by the department w.e.f. 01.11.2013 without notice as required under Section 25-F (a) of the Act. The grievance of the petitioner remains that persons junior to her namely Dhyan Chand, Mehar Chand Ramesh Kumar and Man Singh have been regularized by the department in October, 2007 and those who had been engaged by the department in 1996 and 1997 had been regularized in January, 2008, whereas petitioner had been working under the department since 1996 has yet not been regularized and thus petitioner alleges unfair labour practice on the part of respondent by giving fictional breaks in service from the year 1996 to 2006. Accordingly, petitioner has prayed that the period of fictional breaks from 1996 onwards be set aside and respondent be directed to pay wages for the break period. The petitioner further prays that respondent be directed to grant work charge/regular status to petitioner after completion of eight or ten years service w.e.f. 01.01.2006 or from the date of her juniors having been regularized in the pay scale of Rs.4900- 10680/- along-with interest @ 12% per annum till the date of realization of amount and litigation expenses of Rs.10,000/- as costs also be paid to petitioner.

3. Respondent contested petition filed separate reply inter alia taken preliminary objections of maintainability, petitioner having no cause of action, petition being bad on account of delay and laches and that the respondent department had regularized the services of labourers who had completed seven years of continuous service with 160 days in each calendar year according to their seniority and fulfillment of the Government policy as stipulated in letter no. PER (AP)-C-B(2)-2/2012 dated 31st August, 2013 of Principal Secretary to the Government of Himachal Pradesh. On merits, it is stated that the case of the petitioner for regularization has already been referred by CCF Chamba vide memo no. A-IX-14/1/Pangi/10533 dated 28.1.2013 and that the delay had occurred due to incorrect name of petitioner in official records as the name of petitioner was appearing as 'Pinki' in some of the muster rolls whereas some muster rolls showed Pan Dei and this was clarified by petitioner by furnishing affidavit with regard to her name as Pan Dei. Thus, there is no deliberate delay on the part of the respondent. On merits, admitted that petitioner has been engaged in Killar Range of Pangi Forest Division on muster roll basis w.e.f. April, 1996 as it can be gathered from the mandays chart. Since petitioner was issued muster roll on being engaged, there was no cause of action to issue specific appointment. It is emphatically denied that respondent had disengaged the petitioner rather she was still working in Killar Range of Pangi Division and no fictional breaks were given to her. It is contended that petitioner of her own use to come and go without intimating and that she had worked with respondent department

intermittently. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

4. The petitioner filed rejoinder and reiterated her stand as maintained in the claim petition.

5. To prove her case, petitioner has sworn an affidavit Ex. PW1/A and closed her evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri S.P. Sharma the then Divisional Forest Officer tendered Ex. RW1/B mandays chart of petitioner, Ex. RW1/C letter dated 31st August, 2012, Ex. RW1/D copy of affidavit of petitioner, Ex. RW1/E letter dated 28.1.2013, Mark-A seniority list of regular and daily wage labour of Pangi Forest Division Killar and Mark-B letter dated 20th July, 2011 regarding regularization of daily waged workers/contingent paid workers and closed evidence.

6. I have heard the Authorized Representative representing petitioner and ld. Dy. D.A. for respondent and have gone through the case file carefully.

7. From the contentions raised, issues were framed by my ld. predecessor for determination on 03.5.2014 which are as under:

1. Whether time to time termination of the services of the petitioner/giving breaks in service to the petitioner by the respondent during the years 1996 to 2006 is/was illegal and unjustified as alleged? . . .*OPP.*
2. Whether the petitioner has a cause of action? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? . . .*OPR.*
5. Relief

8. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : Undressed

Issue No.4 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

9. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously with repetition of evidence.

10. Factum of petitioner having been appointed as daily wager on muster roll by the respondent in April, 1996 is not in dispute. It is also not in dispute that eligibility for regularization of workers in respect of tribal area was to be on the basis of number of minimum requisite days and for Pangi Sub Division it was 160 days. It is admitted case of petitioner that petitioner had worked since April, 1996 but had been deliberately given fictional breaks by respondent so that she did not complete 160 days to get benefits of Section 25-B of the Act. The plea of respondent on the other hand remains that petitioner was still working but had been working intermittently as she of her own use to not come on her duty as she willfully absented several times from it. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that she willfully absented from her duties is devoid of merit as there is nothing in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties. Rather, it is projected to be case as if petitioner came of her own and worked and she left the work of her own sweet will. The plea of petitioner on the other hand remains that fictional breaks were given to her and that several persons junior to her namely Man Singh and Janam Singh have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

11. A bare glance on mandays chart Ex. RW1/B would reveal that in the year 1996 petitioner had worked for 119 days, 190 days in the year 1997, 195 days in the year 1998, 231 days in the year 1999, 184 days in the year 1999, 231 days in the year 2000, 219 days in the year 2001, 231 days in the year 2002, 178 days in the year 2003, 181 days in the year 2004, 239 days in the year 2005, 121 days in the year 2006, 176 days in the year 2007, 211 days in the year 2008, 209 days in the year 2009, 212 days in the year 2010, 205 days in the year 2011, 194 days in the year 2012 and 175 days in the year 2013. It can be noticed that in the year 1996 petitioner has worked for 119 days and in the year 2006 petitioner is shown to have worked only for 121 days i.e. less than 160 days, whereas for other remaining years she had worked for more than 160 days. Thus, this break being within a period of seven years from her termination was definitely a fictional break as except 2006 and 1996 in remaining years she had worked for more than 160 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular and daily waged labourers of Pangi Division has also been relied upon by respondent which is Mark-A on record and all the persons named above have joined in the year 1996 except at serial no. 16, 17, 18 and 19, who have joined subsequent to petitioner. There are also several other workers in the list who had joined in the year 1998. Since respondent had not disputed to have engaged petitioner in April, 1996, she ought to have been regularized having continuously worked for 7 years with requisite number of days requiring for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with her namely Up Sain and Man Singh have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although Conservator of Forest department has made reference for regularization in the year 2013 to the Government ipso facto does not dislodge petitioner for claiming her seniority and continuity in service from her initial engagement and that fictional breaks in no manner affect or eclipse her legitimate of regularization in service.

12. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 1996 to 2010 by giving fictional break she was disengaged from service by the department on 01.11.2013 without any notice as required under Section 25-F (a) of the Act whereas the persons junior to her have been continuously engaged by department for the whole year who had completed more than 160 days in a calendar year. In cross-examination, she had denied that in the year 1996 and 2006 she of her own came on duty and for said reasons she could not complete 160 days. RW1 Shri S.P. Sharma while proving his affidavit Ex. RW1/A has admitted in cross-examination that seniority list was not enclosed with the reply. He has admitted that in Pangi area working of 160 days is to be established to claim benefit of deemed service under Section 25-B of the Act. He has

admitted that petitioner has been engaged in April, 1996 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the year 2006 but he could not plead as no corresponding record has been produced by the respondent so as to establish that on her absence any notice was issued and the version of RW1 that she came and go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. As such, the plea of fictional break given to the petitioner in the year 1996 as well as in the year 2006 get substantiate not only from documentary evidence on record but from testimony of RW1 as well. Although, petitioner being in employment at the time of passing of having fictional breaks as stated above is duly established yet she cannot be deprived of her legitimate right to seek seniority as well as continuity in service from her date of joining along-with other persons working with her. Thus, she cannot be discriminated arbitrarily. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1996 to 2006 was illegal and unjustified but as the petitioner is still in employment with the respondent she is to be given benefit of seniority and continuity in service except back wages in the peculiar circumstances of the case. Issue in question is decided in part in favour of the petitioner and against the respondent. However, in view of foregoing discussions, it cannot be stated that the petitioner had no cause of action. Issue no.2 is thus answered in negative in favour of the petitioner and against the respondent.

ISSUE NO.3

13. This issue was not pressed by Id. Dy.D.A. at the time of arguments which is decided impressed in favour of petitioner and against respondent.

ISSUE NO.4

14. This issue was not pressed during the course of arguments.

15. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248, there was a delay of 12 years. In Ramesh Chand vs. Union of India, CWP No. 812 of 2000, there was a delay of 9 years. In CWP No. 95 of 2000 titled as Divisional Manager vs. Mohinder Kumar, there was a delay of 14 years. In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

16. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF (ISSUE NO.5)

17. For all the aforesaid reasons discussed above it is thus held that the petitioner was in continuous uninterrupted service with the respondent from the date of her initial engagement. The breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim of petitioner is hereby allowed and reference is accordingly answered in her favour. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. She shall, however, be considering for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of March, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 218/2013
Date of Institution : 09.12.2013
Date of decision : 31.03.2015

Shri Mouji Ram s/o Shri Jaimal, r/o Village & Post Office Rohin, Tehsil Palampur, District Kangra, H.P. ...Petitioner.

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P.

....Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Mouji Ram S/O Sh. Jaimal R/O Village & Post Office-Rohin, Tehsil Palampur, Distt. Kangra, H.P. by The Divisional Forest Officer, Palampur, Distt. Kangra, H.P. w.e.f.31.3.2006 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. April, 1994 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the respective Government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement

however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently he submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 7149/2013 which was decided on 19.9.2013 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no. 117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no. 2511 of 2009 which was dismissed by Hon'ble High Court of H.P. consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which too as it was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act and the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being

bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wage workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 12.5.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 21.1.2010 of DFO Palampur to petitioner for reengagement of daily aged workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/S information under RTI Act and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of HP Echo Development Society Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Mouji Ram s/o Sh. Jaimal w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged? . . . *OPP.*
2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? . . . *OPP.*
3. Whether the present claim petition/reference is not maintainable in the present form? . . . *OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? . . . *OPR.*
5. Whether the claim petition is bad for non joinder of the necessary party as alleged? . . . *OPR.*
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of

any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Nilkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Mouji Ram figures at serial no.38 who is shown to have been appointed on 01.4.1994 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1994 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. April, 1994 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination

that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/Q dated 12.5.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of

Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through its officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo-German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective that it was foreign aided project. Not only this, on the analogy of case of Bishan Dass as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal.

18. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in the above stated judgment the Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that "if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments".

19. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of

having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 supra since the petitioner was earning from his agricultural pursuits the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO. 3 & 5

20. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO.4

21. Ld. Dy. D.A. representing respondent has vehemently contended that there is inordinate delay in raising industrial dispute. He has referred to the date of retrenchment which is 31st March, 2006. It is evident from order dated 04.3.2013 of Labour Commissioner that demand notice dated 16.8.2011 was moved after about five years which was observed to be prima facie bogus and frivolous. It remains the case of the petitioner that CWP no. 7149/2013 was filed by him as against the order of Labour Commissioner and vide order dated 19.9.2013 appropriate Govt. i.e. Labour Commissioner had been directed to make reference to the Labour Court in pursuance to which the present reference has been received although demand notice was raised by petitioner on 16.8.2011 after five years of his termination but there is sufficient explanation for not raising the industrial dispute earlier or raising demand notice due to the fact that the petitioner was being assured time and again that he along-with other retrenched workmen would be absorbed in the government departments. In 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) has held that delay in raising dispute may be considered by Court at the time of granting final relief but in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned and the Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. However, depending upon the facts and circumstances of each case the principle of delay and laches have to be seen and applied. Similarly, the Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum- Processing Society Limited and Another, (1999) 6 SCC 82** specifically held that the principle of Limitation Act, 1963 did not

apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. The plea of delay if raised by employer is required to be proved as a matter of fact and that no reference made to Labour Court can be generally questioned on the ground of delay alone. In the case in hand, no material has been placed on record by the respondent establishing that there was inordinate delay on the part of the petitioner in raising the dispute due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurance of respondent and the government as stated in foregoing paragraphs industrial dispute was not raised by petitioner immediately and finally raised when despite repeated assurance to absorb the petitioner in govt. department he was not offered any appointment or absorbed by the government. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. This issue is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

22. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of March, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 220/2013
Date of Institution : 09.12.2013
Date of decision : 31.03.2015

Shri Atma Ram s/o Shri Lal Chand, r/o Village Rakkar, P.O. Kural, Tehsil Palampur, Distt. Kangra, H.P. ...Petitioner.

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P.

....Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Atma Ram S/O Sh. Lal Chand, R/O Village-Rakkar, P.O. Kural, Tehsil Palampur, Distt. Kangra, H.P. by The Divisional Forest Officer, Palampur, Distt. Kangra, H.P. w.e.f.31.3.2006 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. 20.06.1993 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the respective Government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that

Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently he submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 7149/2013 which was decided on 19.9.2013 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which too as it was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act and the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the**

Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.

it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wager workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 21.1.2010 of DFO Palampur to petitioner for reengagement of daily aged workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/S information under RTI Act and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of HP Echo Development Society Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Atma Ram s/o Sh. Lal Chand w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged? ...OPP.

2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? . . . *OPP.*
3. Whether the present claim petition/reference is not maintainable in the present form? . . . *OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? . . . *OPR.*
5. Whether the claim petition is bad for non joinder of the necessary party as alleged? . . . *OPR.*
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied

upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Atma Ram figures at serial no.5 who is shown to have been appointed on 20.6.1993 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1993 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. June, 1993 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the

project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/Q dated 20.2.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the

governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through its officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo- German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective that it was foreign aided project. Not only this, on the analogy of case of Bishan Dass as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal.

18. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in the above stated judgment the Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that "if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments".

19. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he

was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 supra since the petitioner was earning from his agricultural pursuits the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO. 3 & 5

20. Both these issues were not pressed by ld. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO.4

21. Ld. Dy. D.A. representing respondent has vehemently contended that there is inordinate delay in raising industrial dispute. He has referred to the date of retrenchment which is 31st March, 2006. It is evident from order dated 04.3.2013 of Labour Commissioner that demand notice dated 04.7.2011 was moved after about five years which was observed to be prima facie bogus and frivolous. It remains the case of the petitioner that CWP no. 7149/2013 was filed by him as against the order of Labour Commissioner and vide order dated 19.9.2013 appropriate Govt. i.e. Labour Commissioner had been directed to make reference to the Labour Court in pursuance to which the present reference has been received although demand notice was raised by petitioner on 04.7.2011 after five years of his termination but there is sufficient explanation for not raising the industrial dispute earlier or raising demand notice due to the fact that the petitioner was being assured time and again that he along-with other retrenched workmen would be absorbed in the government departments. In 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) has held that delay in raising dispute may be considered by Court at the time of granting final relief but in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned and the Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. However, depending upon the facts and circumstances of each case the principle of delay and laches have to be seen and applied. Similarly, the Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum- Processing Society Limited and Another, (1999) 6 SCC 82** specifically held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. The plea of delay if raised

by employer is required to be proved as a matter of fact and that no reference made to Labour Court can be generally questioned on the ground of delay alone. In the case in hand, no material has been placed on record by the respondent establishing that there was inordinate delay on the part of the petitioner in raising the dispute due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurance of respondent and the government as stated in foregoing paragraphs industrial dispute was not raised by petitioner immediately and finally raised when despite repeated assurance to absorb the petitioner in govt. department he was not offered any appointment or absorbed by the government. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. This issue is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

22. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of March, 2015.

By order,
K. K. SHARMA
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT- CUM- INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 225/2013
Date of Institution : 09.12.2013
Date of decision : 31.03.2015

Shri Suneel Kumar s/o Shri Kapoor Chand, r/o Village and P.O. Kawari via Nagrota Bagwan, Teshsil and Distt. Kangra, H.P.Petitioner.

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P.

....Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Suneel Kumar S/O Sh. Kapoor Chand, R/O Village & Post Office Kawari via Nagrota Bagwan, Tehsil & Distt. Kangra by The Divisional Forest Officer, Palampur, Distt. Kangra, H.P. w.e.f.31.3.2006 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. 17.11.1997 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the respective Government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to

reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently he submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 7149/2013 which was decided on 19.9.2013 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which too as it was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act and the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of

employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wager workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 21.1.2010 of DFO Palampur to petitioner for reengagement of daily aged workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/S information under RTI Act and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of HP Echo Development Society Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Suneel Kumar s/o Sh. Kapoor Chand w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged? ...OPP.
2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? ...OPP.

3. Whether the present claim petition/reference is not maintainable in the present form?
...*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect?
...*OPR.*
5. Whether the claim petition is bad for non joinder of the necessary party as alleged?
...*OPR.*
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-

availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Suneel Kumar figures at serial no.74 who is shown to have been appointed on 03.11.1997 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1997 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. November, 1997 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and

case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/Q dated 20.2.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through its officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held

and powers were delegated to Dy. Director, Indo-German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective that it was foreign aided project. Not only this, on the analogy of case of Bishan Dass as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal.

18. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in the above stated judgment the Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that "if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments".

19. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which

Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 supra since the petitioner was earning from his agricultural pursuits the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO. 3 & 5

20. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO.4

21. Ld. Dy. D.A. representing respondent has vehemently contended that there is inordinate delay in raising industrial dispute. He has referred to the date of retrenchment which is 31st March, 2006. It is evident from order dated 04.3.2013 of Labour Commissioner that demand notice dated 02.6.2011 was moved after about five years which was observed to be prima facie bogus and frivolous. It remains the case of the petitioner that CWP no. 7149/2013 was filed by him as against the order of Labour Commissioner and vide order dated 19.9.2013 appropriate Govt. i.e. Labour Commissioner had been directed to make reference to the Labour Court in pursuance to which the present reference has been received although demand notice was raised by petitioner on 02.6.2011 after five years of his termination but there is sufficient explanation for not raising the industrial dispute earlier or raising demand notice due to the fact that the petitioner was being assured time and again that he along-with other retrenched workmen would be absorbed in the government departments. In 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) has held that delay in raising dispute may be considered by Court at the time of granting final relief but in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned and the Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. However, depending upon the facts and circumstances of each case the principle of delay and laches have to be seen and applied. Similarly, the Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** specifically held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. The plea of delay if raised by employer is required to be proved as a matter of fact and that no reference made to Labour Court can be generally questioned on the ground of delay alone. In the case in hand, no material has been placed on record by the respondent establishing that there was inordinate delay on the part of the petitioner in raising the dispute due to which any prejudice had been caused to the respondent

rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurance of respondent and the government as stated in foregoing paragraphs industrial dispute was not raised by petitioner immediately and finally raised when despite repeated assurance to absorb the petitioner in govt. department he was not offered any appointment or absorbed by the government. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. This issue is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

22. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of March, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 227/2013
Date of Institution : 09.12.2013
Date of decision : 31.03.2015

Shri Gagan Singh s/o late Sh. Sant Ram, r/o Village Malodhan, P.O. Alampur, Tehsil Jasinghpur, Distt. Kangra, H.P. ...Petitioner.

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P.Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Gagan Singh S/O late Sh. Sant Ram, R/O Village-Malodhan, P.O. Alampur, Tehsil Jasinghpur, Distt. Kangra, H.P. by The Divisional Forest Officer, Palampur, Distt. Kangra, H.P. w.e.f.31.3.2006 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. 01.6.1993 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the respective Government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169

daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently he submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 7149/2013 which was decided on 19.9.2013 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which too as it was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act and the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any

provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wager workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act, Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 21.1.2010 of DFO Palampur to petitioner for reengagement of daily aged workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/S information under RTI Act and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of HP Echo Development Society Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Gagan Singh s/o late Sh. Sant Ram w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged? ...OPP.
2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? ...OPP.

3. Whether the present claim petition/reference is not maintainable in the present form?
...*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect?
...*OPR.*
5. Whether the claim petition is bad for non joinder of the necessary party as alleged?
...*OPR.*
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if

worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Gagan Singh figures at serial no.10 who is shown to have been appointed on 16.7.1993 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1994 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. April, 1994 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by

respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/Q dated 20.2.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through its officials only. Not only this,

office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo-German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective that it was foreign aided project. Not only this, on the analogy of case of Bishan Dass as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal.

18. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in the above stated judgment the Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that "if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments".

19. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as titled as **North East**

Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 supra since the petitioner was earning from his agricultural pursuits the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO. 3 & 5

20. Both these issues were not pressed by ld. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO. 4

21. Ld. Dy. D.A. representing respondent has vehemently contended that there is inordinate delay in raising industrial dispute. He has referred to the date of retrenchment which is 31st March, 2006. It is evident from order dated 04.3.2013 of Labour Commissioner that demand notice dated 16.8.2011 was moved after about five years which was observed to be prima facie bogus and frivolous. It remains the case of the petitioner that CWP no. 7149/2013 was filed by him as against the order of Labour Commissioner and vide order dated 19.9.2013 appropriate Govt. i.e. Labour Commissioner had been directed to make reference to the Labour Court in pursuance to which the present reference has been received although demand notice was raised by petitioner on 16.8.2011 after five years of his termination but there is sufficient explanation for not raising the industrial dispute earlier or raising demand notice due to the fact that the petitioner was being assured time and again that he along-with other retrenched workmen would be absorbed in the government departments. In 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) has held that delay in raising dispute may be considered by Court at the time of granting final relief but in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned and the Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. However, depending upon the facts and circumstances of each case the principle of delay and laches have to be seen and applied. Similarly, the Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum- Processing Society Limited and Another, (1999) 6 SCC 82** specifically held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. The plea of delay if raised by employer is required to be proved as a matter of fact and that no reference made to Labour Court can be generally questioned on the ground of delay alone. In the case in hand, no material has been placed on record by the respondent establishing that there was inordinate delay on the part of the

petitioner in raising the dispute due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurance of respondent and the government as stated in foregoing paragraphs industrial dispute was not raised by petitioner immediately and finally raised when despite repeated assurance to absorb the petitioner in govt. department he was not offered any appointment or absorbed by the government. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. This issue is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

22. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of March, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 229/2013
Date of Institution : 09.12.2013
Date of decision : 31.03.2015

Shri Hari Krishan s/o Sh. Dulo Ram, r/o Village Kachhera, P.O. Mumta, Tehsil & Distt. Kangra, H.P. ...Petitioner.

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P.Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Hari Krishan S/O Sh. Dulo Ram R/O Village Kachhera, P.O. Mumta, Tehsil & Distt. Kangra, H.P. by The Divisional Forest Officer, Palampur, Distt. Kangra, H.P. w.e.f. 31.3.2006 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. 01.12.1993 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the respective Government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to

reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently he submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 7149/2013 which was decided on 19.9.2013 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no. 2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which too as it was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act and the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of

employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wager workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 12.5.2009 from Divisional Forest Officer Palampur to petitioner, Ex. PW1/S letter dated 21.1.2010 of DFO Palampur to petitioner for reengagement of daily aged workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/T information under RTI Act and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of HP Eco Development Society Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Hari Krishan s/o Sh. Dulo Ram w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged? ...OPP.

2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? . . .*OPP*.
3. Whether the present claim petition/reference is not maintainable in the present form? . . .*OPR*
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? . . .*OPR*.
5. Whether the claim petition is bad for non joinder of the necessary party as alleged? . . .*OPR*.
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : Unpressed

Issue No. 4 : No

Issue No. 5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied

upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Hari Krishan figures at serial no. 24 who is shown to have been appointed on 21.12.1993 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1993 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. June, 1993 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the

project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 12.5.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/Q dated 20.2.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the

governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through its officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo-German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective that it was foreign aided project. Not only this, on the analogy of case of Bishan Dass as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal.

18. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in the above stated judgment the Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that "if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments".

19. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he

was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 supra since the petitioner was earning from his agricultural pursuits the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO.3 & 5

20. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO.4

21. Ld. Dy. D.A. representing respondent has vehemently contended that there is inordinate delay in raising industrial dispute. He has referred to the date of retrenchment which is 31st March, 2006. It is evident from order dated 04.3.2013 of Labour Commissioner that demand notice dated 27.6.2011 was moved after about five years which was observed to be prima facie bogus and frivolous. It remains the case of the petitioner that CWP no. 7149/2013 was filed by him as against the order of Labour Commissioner and vide order dated 19.9.2013 appropriate Govt. i.e. Labour Commissioner had been directed to make reference to the Labour Court in pursuance to which the present reference has been received although demand notice was raised by petitioner on 27.6.2011 after five years of his termination but there is sufficient explanation for not raising the industrial dispute earlier or raising demand notice due to the fact that the petitioner was being assured time and again that he along-with other retrenched workmen would be absorbed in the government departments. In 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) has held that delay in raising dispute may be considered by Court at the time of granting final relief but in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned and the Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. However, depending upon the facts and circumstances of each case the principle of delay and laches have to be seen and applied. Similarly, the Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** specifically held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. The plea of delay if raised

by employer is required to be proved as a matter of fact and that no reference made to Labour Court can be generally questioned on the ground of delay alone. In the case in hand, no material has been placed on record by the respondent establishing that there was inordinate delay on the part of the petitioner in raising the dispute due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurance of respondent and the government as stated in foregoing paragraphs industrial dispute was not raised by petitioner immediately and finally raised when despite repeated assurance to absorb the petitioner in govt. department he was not offered any appointment or absorbed by the government. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. This issue is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

22. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of March, 2015.

By order,
K. K. SHARMA
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 230/2013
Date of Institution : 09.12.2013
Date of decision : 31.03.2015

Smt. Anita Devi Bakshi w/o late Shri Balbir Singh, r/o Village Mandhol, P.O. Thara,
Bajjnath, Distt. Kangra, H.P. ...Petitioner.

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P.Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Smt. Anita Devi Bakshi W/O late Sh. Balbir Singh, R/O Village Mandhol, P.O. Thara, Tehsil Baijnath, Distt. Kangra, H.P. by The Divisional Forest Officer, Palampur, Distt. Kangra, H.P. w.e.f. 31.3.2006 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that she had been engaged on daily waged basis on muster roll w.e.f. 17.11.1997 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides she had also worked with Bishan Dass and Sushil Kumar and that she continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to her utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about her retrenchment, she was informed that Government had decided to close the IGCP Palampur and her services were no more required. It is claimed that at the time of her unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the respective Government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that

Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed her willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently he submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 7149/2013 which was decided on 19.9.2013 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but her services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua her illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which too as it was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act and the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the**

Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.

it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and her appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at her sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily waged workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 12.5.2009 from Divisional Forest Officer Palampur to petitioner, Ex. PW1/S letter dated 21.1.2010 of DFO Palampur to petitioner for reengagement of daily aged workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/T information under RTI Act and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved her affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of HP Eco Development Society Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Smt. Anita Devi Bakshi w/o Late Sh. Balbir Singh w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged?

...OPP.

2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? . *..OPP.*
3. Whether the present claim petition/reference is not maintainable in the present form? *.. OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? *...OPR*
5. Whether the claim petition is bad for non joinder of the necessary party as alleged? *...OPR.*
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till

the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that her employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Anita Devi Bakshi figures at serial no.75 who is shown to have been appointed on 17.11.1997 and continued to work till 2006 when she was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1997 till 2006 immediately prior to her retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that she had worked on daily wage basis on muster roll w.e.f. November, 1997 without any appointment order or without settlement of any terms and conditions of her service and that she had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that she had worked with forest department however has denied that she has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but her seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to her office by the Eco Development Society concerning

IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to her office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after her retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 12.5.2009 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/Q dated 20.2.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that her case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for her case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on her termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. she was authorized to do so by Chairman

who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through its officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo-German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective that it was foreign aided project. Not only this, on the analogy of case of Bishan Dass as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal.

18. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, her termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in the above stated judgment the Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that "if the employer wants to deny back wages to the employee or contested her entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving her of the obligation to pay back wages including emoluments".

19. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent

in its reply. In the crossexamination, PW1 has specifically admitted on oath before this court that she was employed as agriculturist. This would also establish that after her retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 supra since the petitioner was earning from her agricultural pursuits the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after her retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO. 3 & 5

20. Both these issues were not pressed by ld. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO. 4

21. Ld. Dy. D.A. representing respondent has vehemently contended that there is inordinate delay in raising industrial dispute. she has referred to the date of retrenchment which is 31st March, 2006. It is evident from order dated 04.3.2013 of Labour Commissioner that demand notice dated 25.7.2011 was moved after about five years which was observed to be prima facie bogus and frivolous. It remains the case of the petitioner that CWP no. 7149/2013 was filed by her as against the order of Labour Commissioner and vide order dated 19.9.2013 appropriate Govt. i.e. Labour Commissioner had been directed to make reference to the Labour Court in pursuance to which the present reference has been received although demand notice was raised by petitioner on 25.7.2011 after five years of her termination but there is sufficient explanation for not raising the industrial dispute earlier or raising demand notice due to the fact that the petitioner was being assured time and again that she along-with other retrenched workmen would be absorbed in the government departments. In 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) has held that delay in raising dispute may be considered by Court at the time of granting final relief but in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned and the Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. However, depending upon the facts and circumstances of each case the principle of delay and laches have to be seen and applied. Similarly, the Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum- Processing Society Limited and Another, (1999) 6 SCC 82** specifically held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under

Industrial Disputes Act cannot be denied merely on the ground of delay. The plea of delay if raised by employer is required to be proved as a matter of fact and that no reference made to Labour Court can be generally questioned on the ground of delay alone. In the case in hand, no material has been placed on record by the respondent establishing that there was inordinate delay on the part of the petitioner in raising the dispute due to which any prejudice had been caused to the respondent rather petitioner in her evidence has highlighted and proved material facts establishing that on account of repeated assurance of respondent and the government as stated in foregoing paragraphs industrial dispute was not raised by petitioner immediately and finally raised when despite repeated assurance to absorb the petitioner in govt. department she was not offered any appointment or absorbed by the government. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. This issue is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

22. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of her illegal termination **except back wages**. The parties, however, shall bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of March, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 231/2013
Date of Institution : 09.12.2013
Date of decision : 31.03.2015

Shri Jai Ram s/o Shri Nurdhan Ram, r/o Village & P.O. Jandpur, Tehsil Baijnath, Distt. Kangra, H.P.Petitioner.

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P.

....Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Jai Ram S/O Sh. Nurdhan Ram, R/O Village and Post Office Jandpur, Tehsil Baijnath, Distt. Kangra, H.P. by The Divisional Forest Officer, Palampur, Distt. Kangra, H.P. w.e.f. 31.3.2006 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. August, 1995 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the respective Government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that

Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently he submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 7149/2013 which was decided on 19.9.2013 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which too as it was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act and the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the**

Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.

it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wager workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 21.1.2010 of DFO Palampur to petitioner for reengagement of daily aged workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/S letter dated 12.5.2009 from Divisional Forest Officer Palampur to petitioner, Ex. PW1/T information under RTI Act and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of HP Eco Development Society Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Jai Ram s/o Sh. Nurdhan Ram w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged?
...OPP.

2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? ...*OPP*.
3. Whether the present claim petition/reference is not maintainable in the present form? ...*OPR*.
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? ...*OPR*.
5. Whether the claim petition is bad for non joinder of the necessary party as alleged? ...*OPR*.
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : Unpressed

Issue No. 4 : No

Issue No. 5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied

upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Jai Ram figures at serial no.13 who is shown to have been appointed on 01.8.1993 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1993 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. August, 1995 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the

project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/Q dated 20.2.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the

governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through its officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo-German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective that it was foreign aided project. Not only this, on the analogy of case of Bishan Dass as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal.

18. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in the above stated judgment the Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that "if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments".

19. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he

was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 supra since the petitioner was earning from his agricultural pursuits the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO.3 & 5

20. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO.4

21. Ld. Dy. D.A. representing respondent has vehemently contended that there is inordinate delay in raising industrial dispute. He has referred to the date of retrenchment which is 31st March, 2006. It is evident from order dated 07.3.2013 of Labour Commissioner that demand notice dated 03.6.2011 was moved after about five years which was observed to be prima facie bogus and frivolous. It remains the case of the petitioner that CWP no. 7149/2013 was filed by him as against the order of Labour Commissioner and vide order dated 19.9.2013 appropriate Govt. i.e. Labour Commissioner had been directed to make reference to the Labour Court in pursuance to which the present reference has been received although demand notice was raised by petitioner on 03.6.2011 after five years of his termination but there is sufficient explanation for not raising the industrial dispute earlier or raising demand notice due to the fact that the petitioner was being assured time and again that he along-with other retrenched workmen would be absorbed in the government departments. In 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) has held that delay in raising dispute may be considered by Court at the time of granting final relief but in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned and the Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. However, depending upon the facts and circumstances of each case the principle of delay and laches have to be seen and applied. Similarly, the Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum- Processing Society Limited and Another, (1999) 6 SCC 82** specifically held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. The plea of delay if raised

by employer is required to be proved as a matter of fact and that no reference made to Labour Court can be generally questioned on the ground of delay alone. In the case in hand, no material has been placed on record by the respondent establishing that there was inordinate delay on the part of the petitioner in raising the dispute due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurance of respondent and the government as stated in foregoing paragraphs industrial dispute was not raised by petitioner immediately and finally raised when despite repeated assurance to absorb the petitioner in govt. department he was not offered any appointment or absorbed by the government. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. This issue is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

22. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of March, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 232/2013
Date of Institution : 09.12.2013
Date of decision : 31.03.2015

Shri Deep Raj s/o Shri Dhani Ram, r/o Village Ram Nagar, P.O. Tatehal, Tehsil Palampur,
Distt. Kangra, H.P.Petitioner.

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P.Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Deep Raj S/O Sh. Dhani Ram, R/O Village-Ram Nagar, P.O. – Tatehal, Tehsil Palampur, Distt. Kangra, H.P. by The Divisional Forest Officer, Palampur, Distt. Kangra, H.P. w.e.f. 31.3.2006 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. February, 1997 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the respective Government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to

reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently he submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. *i.e.* Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 7149/2013 which was decided on 19.9.2013 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which too as it was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act and the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of

employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wager workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 21.1.2010 of DFO Palampur to petitioner for reengagement of daily aged workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/S letter dated 12.5.2009 from Divisional Forest Officer Palampur to petitioner, Ex. PW1/T information under RTI Act and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of HP Eco Development Society Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Deep Raj s/o Sh. Dhani Ram w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged? ...OPP.

2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? ...*OPP*.
3. Whether the present claim petition/reference is not maintainable in the present form? ...*OPR*.
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? ...*OPR*.
5. Whether the claim petition is bad for non joinder of the necessary party as alleged? ...*OPR*.
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied

upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Deep Raj figures at serial no.69 who is shown to have been appointed on 1.2.1997 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1997 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. February, 1997 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the

project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/Q dated 20.2.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the

governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through its officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo-German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective that it was foreign aided project. Not only this, on the analogy of case of Bishan Dass as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal.

18. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in the above stated judgment the Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that "if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments".

19. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he

was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 supra since the petitioner was earning from his agricultural pursuits the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO.3 & 5

20. Both these issues were not pressed by ld. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO. 4

21. Ld. Dy. D.A. representing respondent has vehemently contended that there is inordinate delay in raising industrial dispute. He has referred to the date of retrenchment which is 31st March, 2006. It is evident from order dated 04.3.2013 of Labour Commissioner that demand notice dated 30.8.2011 was moved after about five years which was observed to be prima facie bogus and frivolous. It remains the case of the petitioner that CWP no. 7149/2013 was filed by him as against the order of Labour Commissioner and vide order dated 19.9.2013 appropriate Govt. i.e. Labour Commissioner had been directed to make reference to the Labour Court in pursuance to which the present reference has been received although demand notice was raised by petitioner on 30.8.2011 after five years of his termination but there is sufficient explanation for not raising the industrial dispute earlier or raising demand notice due to the fact that the petitioner was being assured time and again that he along-with other retrenched workmen would be absorbed in the government departments. In 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) has held that delay in raising dispute may be considered by Court at the time of granting final relief but in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned and the Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. However, depending upon the facts and circumstances of each case the principle of delay and laches have to be seen and applied. Similarly, the Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** specifically held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. The plea of delay if raised

by employer is required to be proved as a matter of fact and that no reference made to Labour Court can be generally questioned on the ground of delay alone. In the case in hand, no material has been placed on record by the respondent establishing that there was inordinate delay on the part of the petitioner in raising the dispute due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurance of respondent and the government as stated in foregoing paragraphs industrial dispute was not raised by petitioner immediately and finally raised when despite repeated assurance to absorb the petitioner in govt. department he was not offered any appointment or absorbed by the government. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. This issue is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

22. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of March, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 234/2013
Date of Institution : 09.12.2013
Date of decision : 31.03.2015

Shri Balwant Singh s/o Shri Dalip Chand, r/o Village Gharoon, P.O. Dehan, Tehsil Palampur, Distt. Kangra, H.P. *...Petitioner.*

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P.

....Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Balwant Singh S/O Sh. Dalip Chand, R/O Village Gharoon, P.O. Dehan, Tehsil Palampur, Distt. Kangra, H.P. by The Divisional Forest Officer, Palampur, Distt. Kangra, H.P. w.e.f.31.3.2006 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. 1997 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the respective Government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to

reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently he submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 7149/2013 which was decided on 19.9.2013 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which too as it was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act and the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of

employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wager workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 21.1.2010 of DFO Palampur to petitioner for reengagement of daily aged workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/S information under RTI Act and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of HP Echo Development Society Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Balwant Singh s/o Sh. Dalip Chand w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged?
...OPP.

2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? ...*OPP*.
3. Whether the present claim petition/reference is not maintainable in the present form? ...*OPR*.
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? ...*OPR*.
5. Whether the claim petition is bad for non joinder of the necessary party as alleged? ...*OPR*.
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied

upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Balwant Singh figures at serial no.4 of additional list who is shown to have been appointed on 16.9.1999 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1999 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. 1994 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in

question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/Q dated 20.2.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the

governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through its officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo- German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective that it was foreign aided project. Not only this, on the analogy of case of Bishan Dass as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal.

18. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in the above stated judgment the Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that "if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments".

19. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he

was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 supra since the petitioner was earning from his agricultural pursuits the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO. 3 & 5

20. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO. 4

21. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally

raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

22. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of March, 2015.

By order,
K. K. SHARMA
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 237/2013
Date of Institution : 09.12.2013
Date of decision : 31.03.2015

Shri Ashok Kumar s/o late Sh. Amin Chand Rana, r/o VPO Nagehar, Tehsil Baijnath, Distt. Kangra, H.P.Petitioner.

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P.Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Ahsok Kumar S/O late Sh. Amin Chand Rana, R/O VPO Nagehar, Tehsil Baijnath, Distt. Kangra, H.P. by The Divisional Forest Officer, Palampur, Distt. Kangra, H.P. w.e.f. 31.3.2006 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. April, 1995 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the respective Government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not

been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently he submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 7149/2013 which was decided on 19.9.2013 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which too as it was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act and the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also

asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wage workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 21.1.2010 of DFO Palampur to petitioner for reengagement of daily aged workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/S letter dated 12.5.2009 from Divisional Forest Officer Palampur to petitioner, Ex. PW1/T information under RTI Act and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of HP Eco Development Society Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Ashok Kumar s/o Sh. Amin Chand w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged? ...OPP.
2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? ...OPP.
3. Whether the present claim petition/reference is not maintainable in the present form? ...OPR.

4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? ...*OPR.*
5. Whether the claim petition is bad for non joinder of the necessary party as alleged? ...*OPR.*
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : Unpressed

Issue No. 4 : No

Issue No. 5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in crossexamination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Ashok Kumar figures at serial no.51 who is shown to have been appointed on 1.4.1995 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1995 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. April, 1995 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well

as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/Q dated 20.2.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through it officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo-German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar

Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective that it was foreign aided project. Not only this, on the analogy of case of Bishan Dass as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal.

18. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in the above stated judgment the Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that "if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments".

19. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 supra since the petitioner was earning from his agricultural pursuits

the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO. 3 & 5

20. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO. 4

21. Id. Dy. D.A. representing respondent has vehemently contended that there is inordinate delay in raising industrial dispute. He has referred to the date of retrenchment which is 31st March, 2006. It is evident from order dated 04.3.2013 of Labour Commissioner that demand notice dated 04.6.2011 was moved after about five years which was observed to be prima facie bogus and frivolous. It remains the case of the petitioner that CWP no. 7149/2013 was filed by him as against the order of Labour Commissioner and vide order dated 19.9.2013 appropriate Govt. i.e. Labour Commissioner had been directed to make reference to the Labour Court in pursuance to which the present reference has been received although demand notice was raised by petitioner on 04.6.2011 after five years of his termination but there is sufficient explanation for not raising the industrial dispute earlier or raising demand notice due to the fact that the petitioner was being assured time and again that he along-with other retrenched workmen would be absorbed in the government departments. In 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) has held that delay in raising dispute may be considered by Court at the time of granting final relief but in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned and the Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. However, depending upon the facts and circumstances of each case the principle of delay and laches have to be seen and applied. Similarly, the Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** specifically held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. The plea of delay if raised by employer is required to be proved as a matter of fact and that no reference made to Labour Court can be generally questioned on the ground of delay alone. In the case in hand, no material has been placed on record by the respondent establishing that there was inordinate delay on the part of the petitioner in raising the dispute due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurance of respondent and the government as stated in foregoing paragraphs industrial dispute was not raised by petitioner immediately and finally raised when despite repeated assurance to absorb the petitioner in govt. department he was not offered any appointment or absorbed by the government. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. This issue is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

22. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of March, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 129/2014
Date of Institution : 06.3.2014
Date of decision : 31.03.2015

Smt. Sunita Devi w/o late Sh. Rajesh Kumar, r/o Village Kandhi, P.O. Sai, Thural, Tehsil Palampur, Distt. Kangra, H.P. *...Petitioner.*

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P. *...Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Smt. Sunita Devi W/O Late Sh. Rajesh Kumar R/O Village-Kandhi, P.O. Sai Thuran, Tehsil Palampur, Distt. Kangra, (H.P.) w.e.f.

31.3.2006 by the Eco Development Society/Indo German Changer Project (I.G.C.P.), Palampur without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that she had been engaged on daily waged basis on muster roll w.e.f. May, 1998 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides she had also worked with Bishan Dass and Sushil Kumar and that she continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to her utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about her retrenchment, she was informed that Government had decided to close the IGCP Palampur and her services were no more required. It is claimed that at the time of her unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed her willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but her services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua her illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and her appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at her sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wager workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 21.1.2010 of DFO Palampur to petitioner for reengagement of daily aged workers of IGCP Palampur and IWDP (Hills) Kandi Area Ex. PW1/S information under RTI Act and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved her affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of HP Eco Development Society Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Smt. Sunita Devi w/o late Sh. Rajesh Kumar w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged? ...OPP.
2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? ...OPP.
3. Whether the present claim petition/reference is not maintainable in the present form? ...OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? ...OPR.
5. Whether the claim petition is bad for non joinder of the necessary party as alleged? ...OPR.
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : Unpressed

Issue No. 4 : No

Issue No. 5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner was employed in IGCP Palampur a foreign aided project besides the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that IGCP Palampur had been closed in 2006 and on the closure of project, the Eco-Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex

Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that her employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1, it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Sunita Devi figures at serial no.79 who is shown to have been appointed on 08.6.1998 and continued to work till 2006 when she was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1998 till 2006 immediately prior to her retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that she had worked on daily wage basis on muster roll w.e.f. 1993 without any appointment order or without settlement of any terms and conditions of her service and that she had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that she had worked with forest department however has denied that she has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but her seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to her office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to her office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties. Moreover, no official of Eco-Development Society or IGCP has been examined by respondent to negate the claim of petitioner.

15. The plea of petitioner further remains that after her retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J

stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 10.3.2009 and prior to it letter Ex. PW1/Q dated 20.2.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that her case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for her case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on her termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. she was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through it officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo-German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even

when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project rather it is the State Govt. which is liable to redress grievance of the petitioner. However, Divisional Forest Officer Palampur who is employee of State Forest Department was essentially involved in project work in question and also saddled with the responsibility of taking charge of entire project as stated in foregoing paras, could be in law fastened with the liability of satisfying award on behalf of IGCP Palampur. Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, her termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested her entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving her of the obligation to pay back wages including emoluments"*.

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that she was employed as agriculturist. This would also establish that after her retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from her agricultural pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful

employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after her retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO. 3 & 5

19. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO. 4

20. Id. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum- Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of her illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of March, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 259/2012
Date of Institution : 15.06.2012
Date of decision : 24.04.2015

Shri Jagat Ram s/o Shri Ghassitu Ram, r/o VPO Guga Saloh, Tehsil Palampur, Distt. Kangra, H.P. *...Petitioner.*

Versus

1. The Conservator of Forest, Forest Circle, Dharamshala, Distt. Kangra, H.P.
2. The Divisional Forest Officer, Forest Division Palampur, Distt. Kangra, H.P. *....Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Jagat Ram S/O Sh. Ghassitu Ram, VPO Guga saloh, Tehsil Palampur, Distt. Kangra, H.P. by the Conservator of Forest, Forest Circle, Dharamshala, Distt. Kangra, H.P. during the year 2008 without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what amount of back wages, seniority, past service benefits & compensation the above aggrieved workman is entitled to from above employer?”

2. After the receipt of the abovestated reference, a corrigendum dated 17th June, 2013 was received from the appropriate government which reads as under:

“The Conservator of Forest, Forest Circle, Dharamshala, Distt. Kangra, H.P.” be read as “The Conservator of Forest, Forest Circle, Dharamshala, Distt. Kangra, H.P. and The Divisional Forest Officer, Forest Division Palampur, Distt. Kangra, H.P.”

3. Averments made in the claim petition under Section 10 of Industrial Disputes Act (hereinafter referred to as the “Act”) filed by the petitioner in pursuance to reference received from appropriate government vide notification dated 29.5.2012 and thereafter corrigendum dated 17.6.2013 reveal that the petitioner had been engaged by the respondent in September, 1997 on muster roll without any appointment letter who had continuously worked upto December, 1999. The grievance of the petitioner remains that he had completed more than 240 days in the year 1998 and 1999 respectively as in the year 1998 he had completed 354 days and 340 days in 1999 and was duly covered under Section 25-B of the Act but thereafter the service conditions of petitioner had been changed by respondent as he had been disengaged by respondent department giving him fictional breaks so that he did not complete 240 days in each calendar year and this practice had been adopted by department upto the year 2004 before terminating his services in 2004. It is claimed that consequent upon termination of his services, petitioner raised demand for his reinstatement vide representation but conciliation failed however dispute was not referred to this Court as the same was declined by competent authority vide letter dated 25.9.2007 on the ground that petitioner had not completed 240 days in last 12 calendar year months preceding his termination. It further remains the case of the petitioner that in September 2008 he had been again provided muster roll by department where he continued to work uninterruptedly till November/December, 2008. Again the services of petitioner are stated to have been terminated by department in the year 2008 and before termination no show cause notice was given and at the same time, no inquiry was conducted. It further remains the case of petitioner that petitioner was neither given notice period for retrenchment nor any compensation amount which was required to be paid to petitioner within the ambit of Section 25-F of the Act. The petitioner claimed to have represented several times to respondent department to engage him without any breaks vide his representation dated 26.8.2004, 23.9.2004, 25.6.2005 and 28.7.2005 but despite that his services had been terminated and thereafter he had again represented to department on 30.12.2008 and 30.3.2009 but he had not been reengaged for which he raised demand notice qua his illegal termination on 29.5.2009 and revised demand notice dated 6.10.2009 which was forwarded to Labour-cum-Conciliation Officer for necessary action and again the failure report was submitted but at this stage appropriate government had referred the dispute of the petitioner for adjudication before this court vide notification dated 29.5.2012. It is alleged that in the said notification, appropriate government had not made the Divisional Forest Officer Palampur as party and issue with regard to time to time termination and artificial breaks in service has not been mentioned by the government for which his request was sent for amendment of corrigendum which was allowed to the extent that the Divisional Forest Officer Palampur be impleaded as party along-with Conservator of Forest but request for incorporation of fictional break from time to time termination was turned down. The grievances of petitioner also remains that at the time of disengagement of his services in the year 2008, department had not followed the principle of ‘last come first go’ since persons junior to petitioner had been retained in service namely S/Sh. Prem Singh, Sanjay Kumar and Subhash Chand and thus respondent while retaining these above named officials and terminating the services of petitioner ignored mandate of Section 25-G of the Act. It is also claimed that the action of respondent department in giving fictional breaks to petitioner from the year 2000 to 2008 and finally terminating his services in 2008 was illegal and unjustified besides due to fictional breaks and termination from services, the petitioner could not remain gainfully employed and thus entitled him to be reinstated with full back wages, seniority and continuity in service.

4. Respondents no. 1 & 2 filed joint reply contested the claim petition inter-alia taken preliminary objections qua maintainability, delay and laches, petition being bad on account of act and conduct, being bad on account of nonjoinder and mis-joinder of parties. It is claimed that

petitioner was engaged by Sourabh Van Vihar Society Palampur in the month of September, 2008 where he worked till November, 2008 on bill basis. It further remains the case of respondents that petitioner had been given seasonal work and was paid by the said society out of the funds generated by it. On merits admitted that petitioner was employed on daily waged basis from September, 1997 to 2004 for seasonal forestry work with respondents but as he was engaged afresh with Sourabh Van Vihar Society in 2008, he cannot claim continuity in service from period he worked with respondent. It is alleged that demand notice dated 26.7.2005, the petitioner had raised industrial dispute despite that termination of his services by respondent no.2 in the year 2004 but the same was rejected by appropriate government vide letter dated 25.9.2007. It is claimed that Sourabh Van Vihar Society was independent co-operative body constituted for the purposes to develop and promote eco tourism work and from its bye-laws respondents no.1 as Chairman of governing body in ex-officio capacity besides the society in question was being run by executive committee and thus any action taken by respondent in their ex-officio capacity qua the affairs of the society cannot be termed as action taken with or for the functioning of the state/forest department. Thus, it is asserted that in view of fresh engagement of petitioner in the year 2008 by society, he cannot be allowed to seek continuity of service with the period which he had served with the respondent no.2 from September, 1997 to March, 2004. In so far as employees who have been retained in service and regularized as claimed in the petition by petitioner, respondents have claimed by stating that none of these workers had worked with Sourabh Van Vihar Society Palampur. Moreover, the claim of the petitioner for reengagement with the respondent no.2 has already been rejected by appropriate government on 25.9.2007 being frivolous and vexatious. So far as petitioner being not gainfully employed, respondent in its reply has stated that petitioner was employed as private driver and was also an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply filed by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had stepped into the witness box as PW1 sworn in affidavit Ex. PW1/A under Order 18 Rule 4 CPC, tendered/proved Ex. PW1/B letter dated 25.12.1999 of Divisional Forest Officer Palampur to petitioner, Mark-A, Mark-B and Mark-C which are the copies of legal notices dated 26.8.2004, 23.9.2004 and 30.12.2008 respectively. Ex. PW1/C, which is copy of demand notice report under section 12(4) of Industrial Disputes Act, 1947, Ex. PW1/D letter dated 30th March, 2009 from petitioner to Divisional Forest Officer Palampur, Mark-D govt. letter dated 16.5.2009 of Divisional Forest Officer Palampur to petitioner, Mark -E is letter dated 28.5.2009 and Mark-F is a letter dated 29.5.2009 from petitioner to Divisional Forest Officer Palampur. Ex. PW1/E registered letter dated 6.10.2009 which is continuation of demand notice dated 29.5.2009 and revised demand notice under Section 2-A of Industrial Disputes Act and closed the evidence.

7. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer, Plamapur who tendered/proved his affidavit under Order 18 Rule 4 CPC. Ex. RW1/B copy of mandays chart of petitioner, Ex. RW1/C Copy of letter dated 26.7.2005, Ex. RW1/D copy of application under Section 10(2), Ex. RW1/E copy of letter dated 25.9.2007, Ex. RW1/F copy of registration no.42 dated 23.6.2007 and Ex.RW1/G is the seniority list and closed the evidence.

8. I have heard the Authorized Representative as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 01.03.2014 for determination.

6. Whether the termination of the services of the petitioner by the respondent during the year 2008 is/was illegal and unjustified as alleged? ... *OPP*.

7. Whether the claim petition is not maintainable in the present form? ...*OPR.*
8. Whether the claim petition is hit by vice of delay and laches as alleged. If so, its effect? ...*OPR.*
9. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ...*OPR.*
10. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ...*OPR.*
11. Whether the petitioner has suppressed the true and material facts from the Court as alleged. If so, its effect? ...*OPR.*
12. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Discussed

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

11. At the outset, it would be apt to mention here that Id. Authorized Representative/counsel for the petitioner vide separate statement dated 24.4.2015 on record did not press the plea of time to time break in service i.e. fictional break and that petitioner did not work with respondent from 2004 to 2008 and this fact does not find mentioned in the reference received from appropriate government. Since petitioner does not press the plea of alleged fictional break having been given by respondent, the same plea merits rejection.

12. In so far as the plea of petitioner on the point of respondents department having not followed the principle of 'last come first go' envisaged under Section 25-G of the Act is concerned, suffice would be to state here that respondent department had for unexplained and unforeseen reasons had retained junior workmen to that of petitioner without any opportunity of being heard to petitioner. In this regard, reliance is placed on the seniority list of daily waged workers as stood on 31st December, 2007 which is Ex. RW1/G. A bare glance on the above said list would reveal that at serial no.9 one Prem Singh s/o Khapu Ram is shown to be working as on 31.12.2007 who was appointed of 01.6.1998. Similarly at serial no.10 Sanjay Kumar s/o Raseela Ram is also shown to

be junior to petitioner having been appointed on 01.7.1998 and working till 31.12.2007. Similarly at serial no.14 Subhash Chand s/o Pritam Chand is shown to have been appointed on 1.3.1998 who was also working till 31.12.2007. It is admitted case of parties that petitioner had joined in September, 1997 whereas abovenamed employees had joined in 1998. Thus, all the above named daily waged workers are shown to have joined service in 1998 and were working in 2007 as well which squarely show that respondent department while terminating the services of petitioner in 2008 had ignored the mandate of Section 25-G of the Act which postulates that the workman who had come in last has to go first in the matter of retrenchment under Section 25-G of the Act. Certainly, workmen figuring at serial nos. 9, 10, 14 were not retrenched who were junior in service to petitioner. When questioned, RW1 Shri B.S. Yadav the then Divisional Forest Officer and respondent in this case had shown his ignorance qua workmen shown at serial nos. 9, 10 and 14 to be still working with respondent besides he has also shown ignorance on the point of these workmen having been regularized. Significantly, Divisional Forest Officer as witness has admitted list of workmen who had been regularized has not been filed by him. Thus, from cross-examination of RW1 it can be observed that respondent had not only deliberately suppressed true fact from court of daily waged workers at serial nos. 9, 10 and 14 to be still working but also that no correspondence was made with the petitioner by respondent when appointment of said workers was being made. Be it stated that there is no iota of evidence on record produced by the respondent that it had issued any notice to petitioner calling upon him to join while engaging/appointing employees in 1998 as reflected in Ex. RW1/G more so when it is the admitted case of petitioner that he was appointed in September, 1997 on the muster roll basis without issuance of any appointment letter.

13. The case of respondent further remains that petitioner was seasonal worker and was not entitled to statutory protection envisaged Section 25-G of the Act. The plea of respondent being seasonal worker gets falsified from respondent own document which showed that petitioner had worked from 1997 to 2004. In the year 1997 he had worked for 122 days, 354 days in 1998, 340 days in 1999, 138 days in 2000, 154 days in 2001, 213 days in 2003 and 52 days in 2004. Since petitioner has worked for more than 240 days in the year 1998 as well as in 1999 as he had worked for even more than 300 days the plea of respondent that the petitioner was seasonal worker is liable to be rejected. Otherwise also, there is no notification or office order issued by competent authority which would establish that workers working with respondents would be seasonal worker within the meaning of Industrial Disputes Act, 1947.

14. Another plea of the respondent remain that petitioner was not disengaged or terminated from his services rather he had of his own abandoned the job and used to go and come on his whims and fancies. As such, petitioner himself has abandoned the job who was neither retrenched nor his services were ever terminated. RW1 has also testified on oath that petitioner had left the job of daily waged worker while working with respondent and joined Sourabh Van Vihar Society. Thus, plea of respondent primarily remains that from 2004 onwards till the petitioner joined in Sourabh Van Vihar Society, he had willfully abandoned the work with respondent but there is nothing on record to show that any show cause notice was ever issued to the petitioner or that he was asked to report for duty or any explanation for his such absence was called. It is settled law that abandonment has to be established by leading evidence which is a question of fact and has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled **State of H.P. vs. Bhatag Ram and Anr. reported in (2007 LHLJ 903)**. Significantly, respondent did not lead any evidence to prove that petitioner had abandoned job in hand except bald allegation that he of his own had joined Sourabh Van Vihar Society. Thus, in absence of any reliable cogent and convincing evidence qua the plea of abandonment, this court is left with no option to hold that it was not petitioner who abandoned the job rather it was respondent who had terminated/retrenched the services of petitioner.

15. Ld. Authorized Representative for petitioner has contended with vehemence that there is no requirement of petitioner having completed 240 days for the applicability of Section 25-G of

the Act. He has contended that working of 240 days is relevant when petitioner is claiming protection under Section 25-F of the Act whereas in this case, petitioner has given plea up of fictional break as is evident from statement of Authorized Representative dated 24.4.2015 on record and resultantly plea of having not completed 240 days ceases to be relevant in so far as applicability of Section 25-G of Industrial Disputes Act is concerned. RW1 has testified on oath that seniority list of workmen had not been produced and so far as seniority list Ex. RW1/G as it stood on 31.12.2007 is concerned, the name of petitioner did not figure in it for the reason best known to respondent who had worked till 2008 as stated by him but RW1 in his cross-examination has admitted that petitioner was appointed on muster roll basis. It was thus necessary that name of petitioner ought to have been included in the seniority list and by not incorporating name of the petitioner in muster roll, respondent had certainly failed to comply the mandate of Sections 25-G and 25-H of the Act since the procedure adopted by respondent has resulted in workman being disengaged not in good faith but in the colourable exercise of the employee's rights. It is further an exercise to employ/ workmen on casual and temporary basis while continuing them for years with the object of depriving them of the status and privileges of workmen which is certainly unfair labour practice envisaged under Section (ra), read with the Vth schedule to the Act. It was so held in judgment of **Hon'ble Apex Court in 2015 LLR 337 titled as Mackinon Machenize & Company Ltd. vs. Mackinon Employees' Union** in which the Hon'ble Apex Court has held that no seniority list or non displaying of seniority list is breach of Section 25-G of the Act justifying retrenchment of workman to be illegal. PW1 petitioner Jagat Ram stepping into witness box deposed on oath in which he claimed to be entitled to protection envisaged under Section 25-G of the Act. Since the respondent had failed to notify petitioner while engaging subsequently daily waged workers at serial nos. 9, 10 and 14 as stated in the foregoing paragraphs, the respondent had certainly ignored the rights of petitioner who had worked for about eight years with respondent as stated above. It is also come in the evidence that even Sourabh Van Vihar Society Palampur worked under respondent nos. 1 and 2 where petitioner had worked for merely 52 days in the year 2008 as per the mandays chart Ex. RW1/G. As such, for the aforesaid reason it is held that petitioner did not abandon his job rather his services were disengaged in violation of provisions of Section 25-G of the Act. Consequently, respondent are to be directed to reengage petitioner forthwith. Petitioner has failed to discharge initial onus of proof that he was not gainfully employed during the period of the forced idleness and as such no back wages are being ordered in favour of the petitioner who was however entitled to seniority and continuity in service from the date of his illegal termination. Issue in hand is decided accordingly.

ISSUE NO.2

16. On non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D. A. for respondents did not press this plea at the time of arguments which is decided unpressed. Otherwise also, from pleadings and evidence on record no inference of claim petition being not maintainable could be raised. As such, issue in hand is answered negative against the respondent and in favour of petitioner.

ISSUE NO.3

17. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad on account of delay and laches. The pleadings and evidence on record show that the petitioner had been retrenched in 2004 who was consequently reengaged in Sourabh Van Vihar Society in 2008 but has raised industrial dispute much later. Ld. Dy. D.A. has made futile attempt to state that delay in raising industrial dispute which ought to have been raised in 2004 immediately on his retrenchment. To ascertain correctness of plea so raised, it would be relevant to consider the facts mentioned in the claim petition. It is alleged in para 6 of the claim petition that petitioner had made representations dated 26.8.2004, 23.9.2004, 25.6.2005 and 28.7.2005 when he

raised demand notice on 29.5.2009 and revised demand notice on 6.10.2009 the copy of the same was forwarded to Labour-cum-Conciliation Officer for settlement. It is also alleged in this para that appropriate government had referred the dispute for adjudication vide notification dated 29.5.2012 which has been registered by this court as reference no.259 of 2012. These facts apparently show that from 2004 and 2005 the petitioner continued representing as stated above and thereafter he raised demand notice on 29.5.2009 and 6.10.2009 respectively as stated in the reference made by the appropriate government vide report no.2239 dated 8.2.2011 and consequently referred the matter to this court vide notification in the year 2012. Thus delay in issuing first demand notice in 2009 has been satisfactorily explained as earlier petitioner had made various representations as referred to in his claim petition. Ld. authorized officer on the other hand contended that delay and laches may be relevant circumstances to be seen by the court while granting the compensation but the claim cannot be denied merely on the ground of delay as has been held in case titled as **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another reported in (1999) 6 SCC 82**. In this judgment, Hon'ble Apex Court has held as under:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. Applying the ratio of judgment of the said case to the present one, claim petition cannot be stated to be bad on the account of delay and laches. Issue no.3 is answered negative in favour of the petitioner and against the respondent.

ISSUE NO. 4

19. The respondent in their reply had raised the plea of estoppel against the petitioner from filing the claim petition by his act and conduct without any exact stipulation to this effect. Thus, the pleadings of the respondent being vague merits rejection. Accordingly, it is held that the petitioner is not estopped from the filing of his claim petition by his act and conduct. Issue no. 4 is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 5

20. Ld. Dy. D.A. for the respondent department vehemently argued that the claim petition is bad for non-joinder of necessary parties. There is nothing in the pleadings of the respondent as to who was essential party to be impleaded as co-respondent. Be it stated here that initially in view of reference only one respondent was made party and on subsequent reference for corrigendum received from the appropriate government Conservator of Forest, Forest Circle, Dharamshala and The Divisional Forest Officer, Forest Division Palampur were made parties. Since Sourabh Van Vihar Society which is functionary body under the State/respondent the same was not required to be made party more so when the claim petition gets eclipsed from statement of authorized representative dated 24.4.2015 in which it is stated that petitioner had worked till 2004 with the respondent nos. 1 & 2. That being so, impleading of Sourabh Van Vihar Society as co-respondent was not necessary for adjudication of dispute inter-se parties. As such, claim petition is held to be not bad for non-joinder of necessary parties. Issue no. 5 is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 6

21. This issue was not pressed by Ld. Dy.D.A. at the time of arguments which is decided unpressed in favour of petitioner and against respondents.

RELIEF

22. As a sequel to my findings on the issues no. 1 to 6, the reference/claim petition is allowed in part and respondents are hereby directed to reengage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his illegal termination i.e. from the year 2008 **except back wages**. The parties however shall bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of April, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. 139 / 2013

Sh. Prem Chand son of Sh. Mahant Ram r/o Village Kaloga, P.O. Mandap, Tehsil Sarkaghat, Distt. Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, Himachal Pradesh State Electricity Board, Division Dharampur, Distt. Mandi, H.P. ...*Respondent.*

25-04-2015 Present : None for the petitioner.

Sh. B. K Sood, Adv. csl. for the respondent.

RW Sh. Mahinder Singh, Sr.Executive Engineer, Electrical Division, HPSEB Ltd. Dharampur, Distt. Mandi is present and has filed affidavit. Case called several times but none has appeared on behalf of the petitioner who was present on previous dates of hearing. It is 11.30 A.M. Be awaited and put up after lunch hours at 2.30 PM.

By order,
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

25-04-2015 Present : None for the petitioner.

Sh. Mahinder Singh, Sr.Executive Engineer, Electrical Division,

HPSEB Ltd. Dharampur in person along-with Sh. Prithvi Pal Sharma, S.D.O., HPSEB, Tihra. for the respondent. Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.38 P.M. None appearance of petitioner or his ld. counsel today despite knowledge of hearing of case is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for nonprosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the order be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
25-04-2015

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. 140/ 2013

Sh. Hem Singh son of Sh. Bhutoo Ram, r/o Village Kaloga, P.O. Mandap, Tehsil Sarkaghat,
Distt. Mandi, H.P. *...Petitioner.*

Versus

The Executive Engineer, Himachal Pradesh State Electricity Board, Division Dharampur,
Distt. Mandi, H.P. *...Respondent.*

25-04-2015 Present : None for the petitioner.

Sh. B.K Sood, Adv. csl. for the respondent.

RW Sh. Mahinder Singh, Sr.Executive Engineer, Electrical Division, HPSEB Ltd. Dharampur, Distt. Mandi is present and has filed affidavit. Case called several times but none has appeared on behalf of the petitioner who was present on previous dates of hearing. It is 11.40 A.M. Be awaited and put up after lunch hours at 2.40 PM.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

25-04-2015 Present: None for the petitioner.

Sh. Mahinder Singh, Sr.Executive Engineer, Electrical Division, HPSEB Ltd. Dharampur in person along-with Sh. Prithvi Pal Sharma, S.D.O., HPSEB, Tihra. for the respondent. Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.43 P.M. None appearance of petitioner or his ld. counsel today despite knowledge of hearing of case is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for nonprosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the order be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
25-04-2015

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. 141 / 2013

Sh. Hari Chand son of Sh. Parma Ram, r/o Village Kaloga, P.O. Mandap, Tehsil Sarkaghat,
Distt. Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, Himachal Pradesh State Electricity Board, Division Dharampur,
Distt. Mandi, H.P.*Respondent.*

25-04-2015 Present: None for the petitioner.

Sh. B. K. Sood, Adv. csl. for the respondent.

RW Sh. Mahinder Singh, Sr.Executive Engineer, Electrical Division, HPSEB Ltd. Dharampur, Distt. Mandi is present and has filed affidavit. Case called several times but none has appeared on behalf of the petitioner who was present on previous dates of hearing. It is 11.35 A.M. Be awaited and put up after lunch hours at 2.35 PM.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

25-04-2015 Present: None for the petitioner.

Sh. Mahinder Singh, Sr.Executive Engineer, Electrical Division, HPSEB Ltd. Dharampur in person along-with Sh. Prithvi Pal Sharma, S.D.O., HPSEB, Tihra for the respondent.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.40 P.M. None appearance of petitioner or his ld. counsel today despite knowledge of hearing of case is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for nonprosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the order be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
25-04-2015

By order,
K. K. SHARMA
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 109/2012
Date of Institution : 06.1.2012
Date of decision : 29.04.2015

Shri Om Prakash s/o Shri Bhadru, r/o Village and P.O. Jhamer, Tehsil Joginder Nagar,
District Mandi, H.P. *...Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P.
....Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Om Prakash S/O Shri Bhadru, Village and P.O. Jhamer, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive

Engineer, B&R Division, H.P.P.W.D Joginder Nagar, District Mandi, H.P. from time to time during year, 1998 to August, 2007, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non-availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer?"

2. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 0.1.6.1998 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.7.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for short). The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

3. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from January, 1999 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

4. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

5. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B and copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri B.S. Barwal the then Executive Engineer, HPPWD (B&R) Division Joginder Nagar as RW1 tendered Ex. RW1/A regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C year-wise working days of daily wage Beldar and closed evidence.

6. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

7. From the contentions raised, following issues were framed by my Id. predecessor on 26.9.2012 for determination:

1. Whether the termination of the services/giving fictional breaks in service to the petitioner by the respondent from time to time from the year 1998 to August, 2007 is illegal and unjustified as alleged? ... *OPP*.
2. Whether the petition is not maintainable in the present form?*OPR*.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ...*OPR*.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ...*OPR*.
5. Relief.

8. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

9. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. 01.6.1998 is not in dispute. It is the admitted case of petitioner that he had worked since June, 1998 but he had been deliberately given fictional breaks by respondent so that he did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that he willfully absented from his duties is devoid of merit as there is nothing in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties. Rather, it is projected to be case as if petitioner came of his own and worked left the work of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Geet Devi, Dalip Singh, Goutam Singh and Anil Kumar have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

10. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1999 petitioner had worked for 24 days, 129 days in the year 2000, 161 days in the year 2001, 152 days in the year 2002, 146 days in the year 2003, 158 days in the year 2004, 144 days in the year 2005, 148 days in the year 2006, 216 days in the year 2007, 364 days in the year 2008, 363 days in the year 2009, 361 days in the year 2010, 363 days in the year 2011 and 87 days in the year 2012. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster

roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but his instruction appears to be have been completely ignored as claimant petitioner was engaged in 1999 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2002, 2003 and 2004 except at serial no. 7 who had joined earlier to petitioner as workman at serial no.8 joined in 8/1999 whereas petitioner had joined in June, 1999. Since respondent had not disputed to have engaged petitioner in January, 1999, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and that fictional breaks in no manner would affect or eclipse him legitimate of regularization in service.

11. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1998 to 2007 by giving fictional break whereas the persons junior to her have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided more than 240 days of work after September, 2007 which means the dispute is only for the years 1998 to 2007 as stated in the affidavit. RW1 Shri B.S. Barwal has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1999 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but he could not plead as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty any notice was issued for unauthorized absence and the version of RW1 that he came and go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 get substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of having fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1998 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the peculiar circumstances of the case. Issue in question is decided in part in favour of the petitioner and against the respondent.

ISSUE NO.2

12. On non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has not pressed this plea. Otherwise

also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 3

13. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that he was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus creation of separate HPWD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 4

14. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

15. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

16. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed and reference is accordingly answered in his favour. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 238/2013
Date of Institution : 09.12.2013
Date of decision : 29.04.2015

Shri Bishamber Singh s/o Shri Mangat Ram, r/o Village Mehda, P.O. Rail, Tehsil Dehra,
Distt. Kangra, H.P. *...Petitioner.*

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P. *....Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Bishamber Singh S/O Sh. Mangat Ram R/O Village Mehda, P.O. Rail, Tehsil Dehra, Distt. Kangra, H.P. by The Divisional Forest Officer, Palampur, Distt. Kangra, H.P. w.e.f.31.3.2006 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. 1995 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner alongwith other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not

been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 7567/2013 which was decided on 30.9.2013 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also

asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wage workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 21.1.2010 of DFO Palampur to petitioner for reengagement of daily aged workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/S letter dated 12.5.2009 from Divisional Forest Officer, Palampur to petitioner, Ex. PW1/T information under RTI Act and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C letter dated 18.2.2006 from Assistant Director, IGCP Palampur to petitioner regarding closure of project, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Bishamber Singh s/o Sh. Mangat Ram w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged? OPP

2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? ...OPP.

3. Whether the present claim petition/reference is not maintainable in the present form?
...*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect?
...*OPR.*
5. Whether the claim petition is bad for non joinder of the necessary party as alleged?
...*OPR.*
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if

worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Bishamber Singh figures at serial no.45 who is shown to have been appointed on 01.7.1994 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1994 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. July, 1994 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by

respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/Q dated 20.2.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through its officials only. Not only this,

office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo-German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project. Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which the Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments"*.

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that

'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO. 3 & 5

19. Both these issues were not pressed by ld. Dy. D. A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO. 4

20. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. Dy. D.A., ld. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 233/2013
Date of Institution : 09.12.2013
Date of decision : 29.04.2015

Shri Pritam Singh s/o Shri Mahant Ram, r/o Village Rakkar, P.O. Kural, Tehsil Palampur, Distt. Kangra, H.P. *...Petitioner.*

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P. *....Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

Whether retrenchment of the services of Sh. Pritam Chand S/O Sh. Mahant Ram R/O Village Rakkar, P.O. Kural, Tehsil Palampur, Distt. Kangra, by The Divisional Forest Officer, Palampur, Distt. Kangra, H.P. w.e.f.31.3.2006 without following the provisions of

the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. 01.01.1994 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 7149/2013 which was decided on 19.9.2013 vide which appropriate

Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil

Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wager workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act, Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 21.1.2010 of DFO Palampur to petitioner for reengagement of daily aged workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/S mandays chart of petitioner, Ex. PW1/T information under RTI Act, Ex. `and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C copy of letter dated 20.2.2006 regarding closure of IGCP Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Pritam Singh s/o Sh. Mahant Ram w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged? ...OPP.
2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? ...OPP.
3. Whether the present claim petition/reference is not maintainable in the present form?OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? ...OPR.

5. Whether the claim petition is bad for non joinder of the necessary party as alleged?

...OPR.

6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco- Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Pritam Singh figures at serial no.33 who is shown to have been appointed on February, 1994 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1994 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. January, 1994 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well

as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/Q dated 20.2.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco-Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through it officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo- German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar

Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project. Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in the above stated judgment the Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments"*.

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu**

Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO. 3 & 5

19. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO.4

20. Id. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 228/2013
Date of Institution : 09.12.2013
Date of decision : 29.04.2015

Shri Kuldeep Singh s/o Shri Rimal Singh, r/o Village Dhabi, P.O. Duhak, Tehsil Palampur,
Distt. Kangra, H.P.*Petitioner.*

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P.*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Kuldeep Singh S/O Sh. Rimal Singh R/O Village-Dhabi, P.O. Duhak, Tehsil Palampur, Distt. Kangra, H.P. by The Divisional Forest Officer, Palampur, Distt. Kangra, H.P. w.e.f.31.3.2006 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. 01.1.1996

by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 7149/2013 which was decided on 19.9.2013 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked

upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wager workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act, Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 21.1.2010 of DFO Palampur to petitioner for reengagement of daily waged workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/S information under RTI Act, Ex. PW1/T detailed mark sheet of petitioner and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C letter dated 21.2.2006 regarding closure of IGCP Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Kuldeep Singh s/o Sh. Rupal Singh w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged? ...OPP.
2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? ... OPP.
3. Whether the present claim petition/reference is not maintainable in the present form? ...OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? ...OPR.
5. Whether the claim petition is bad for non joinder of the necessary party as alleged?OPR.
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : Unpressed

Issue No. 4 : No

Issue No. 5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at

any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in crossexamination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Kuldeep Singh figures at serial no.61 who is shown to have been appointed on 01.1.1996 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1996 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. January, 1996 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP

Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/Q dated 20.2.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through its officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo-German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with

forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project. Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments"*.

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the foregoing discussion, it is held that the relationship of workman and employer existed

between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO. 3 & 5

19. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO. 4

20. Id. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 239/2013

Date of Institution : 09.12.2013

Date of decision : 29.04.2015

H.P. Shri Tara Chand s/o Shri Thenu Ram, r/o Village & P.O. Rail, Tehsil Dehra, Distt. Kangra, ...*Petitioner.*

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P.*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Tara Chand S/O Sh. Thenu Ram R/O Village & P.O. Rail, Tehsil Dehra, Distt. Kangra, H.P. by The Divisional Forest Officer, Palampur, Distt. Kangra, H.P. w.e.f.31.3.2006 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. December, 1995 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass

and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 7567/2013 which was decided on 30.9.2013 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for

adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P. consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act and the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP

Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wagger workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 21.1.2010 of DFO Palampur to petitioner for reengagement of daily aged workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/S letter dated 12.5.2009 from Divisional Forest Officer, Palampur to petitioner, Ex. PW1/T information under RTI Act and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C letter dated 18.2.2006 from Assistant Director, IGCP Palampur to petitioner regarding closure of project, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Tara Chand s/o Sh. Thenu Ram w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged?*OPP*.
2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for?*OPP*.
3. Whether the present claim petition/reference is not maintainable in the present form?*OPR*.
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect?*OPR*.
5. Whether the claim petition is bad for non joinder of the necessary party as alleged?*OPR*.
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No. 2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that

petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Tara Chand figures at serial no.67 who is shown to have been appointed on 01.01.1997 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1997 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. January, 1997 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the

petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/Q dated 20.2.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through its officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo-German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project. Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments"*.

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural pursuits the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO. 3 & 5

19. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO. 4

20. Id. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2015.

By order,
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 219/2013
Date of Institution : 09.12.2013
Date of decision : 29.04.2015

Shri Sanjay Kumar s/o Shri Dharam Chand, r/o Village & P.O. Dhanag, Tehsil Baijnath,
 Distt. Kangra, H.P. ..Petitioner.

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P. ..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Sanjay Kumar S/O Sh. Dharam Chand R/O Village & P.O. Dhanag, Tehsil Baijnath, Distt. Kangra, H.P. by The Divisional Forest Officer, Palampur, Distt. Kangra, H.P. w.e.f.31.3.2006 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. 02.4.1995 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b)

of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 7149/2013 which was decided on 19.9.2013 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh.Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well

as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wage workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 21.1.2010 of DFO Palampur to petitioner for reengagement of daily waged workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex.

PW1/S information under RTI Act and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of H.P. Echo- Development Society, Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Sanjay Kumar s/o Sh.Dharam Chand w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? . . .*OPP*.
3. Whether the present claim petition/reference is not maintainable in the present form? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? . . .*OPR*.
5. Whether the claim petition is bad for non joinder of the necessary party as alleged? . . .*OPR*.
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Sanjay Kumar figures at serial no.52 who is shown to have been appointed on 02.4.1995 and continued to work till 2006 when he was disengaged on account of closure of project. A bare

glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1995 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. April, 1995 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/Q dated 20.2.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file

against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through its officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo- German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project. Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore

the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments"*.

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO.3 & 5

19. Both these issues were not pressed by Ld. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO.4

20. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Dy. D.A., Ld. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be

considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing cum- Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 236/2013
Date of Institution : 09.12.2013
Date of decision : 29.04.2015

Shri Rakesh Chand s/o Shri Parkash Chand, r/o Village & P.O. Malkehar, Tehsil Palampur,
Distt. Kangra, H.P. . . .Petitioner.

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P.

. . Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Rakesh Chand S/O Sh. Parkash Chand R/O Village & Post office-Malkehar, Tehsil Palampur, Distt. Kangra, by The Divisional Forest Officer, Palampur, Distt. Kangra, H.P. w.e.f.31.3.2006 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. 10.3.1998 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts

existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 7149/2013 which was decided on 19.9.2013 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wage worker workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 02.1.2014 information under RTI Act and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of H.P. Eco-Development Society Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Rakesh Chand s/o Sh. Parkash Chand w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged? ..*OPP.*
2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? ..*OPP.*
3. Whether the present claim petition/reference is not maintainable in the present form? ..*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? ..*OPR.*
5. Whether the claim petition is bad for non joinder of the necessary party as alleged? ..*OPR.*
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions

of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Rakesh Chand figures at serial no.81 who is shown to have been appointed on 10.8.1998 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1998 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. March, 1998 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1

Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through its officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo- German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning

of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project. Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments"*.

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was

earning from his agricultural pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO. 3 & 5

19. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO. 4

20. Id. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing cum- Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall

be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 221/2013
Date of Institution : 09.12.2013
Date of decision : 29.04.2015

Shri Rakesh Chand s/o Shri Raghubir Singh, r/o Village & P.O. Bizapur, Tehsil Jaisinghpur,
Distt. Kangra, H.P. . . .Petitioner.

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P. . . .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Rakesh Chand S/O Sh. Raghubir Chand R/O Village & Post Office Bizapur, Tehsil Jaisinghpur, Distt. Kangra, H.P. by The Divisional Forest Officer, Palampur, Distt. Kangra, H.P. w.e.f.31.3.2006 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. 25.8.1995 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 7149/2013 which was decided on 19.9.2013 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his

services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which too as it was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wager workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 02.1.2014 information under RTI Act and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of H.P. Eco- Development Society Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Rakesh Chand s/o Sh. Raghubir Chand w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged? ..OPP.
2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? ..OPP.
3. Whether the present claim petition/reference is not maintainable in the present form? ..OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? ..OPR.
5. Whether the claim petition is bad for non joinder of the necessary party as alleged? ..OPR.
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP

Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Rakesh Chand figures at serial no.54 who is shown to have been appointed on 25.8.1995 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1995 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. August, 1995 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as

well as IGCP Palampur for written consent. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through its officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo- German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project. Not only this, on the analogy of case of Bishan Dass as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when

termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments"*.

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO.3 & 5

19. Both these issues were not pressed by Ld. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO.4

20. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that

retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room. Announced in the open Court today this 29th day of April, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 131/2014
Date of Institution : 11.03.2014
Date of decision : 29.04.2015

Shri Ranjeet Singh Mehra s/o late Shri Kesarmal Mehra, r/o Village Ganesh Bazar, P.O. & Tehsil Baijnath, Distt. Kangra, H.P. . .Petitioner.

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P. . .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether retrenchment of the services of Sh. Ranjeet Singh Mehra S/O Sh. Kesarmal Mehra, R/O Village Ganesh Bazar, P.O. & Tehsil Baijnath, Distt. Kangra, H.P. w.e.f.31.3.2006 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. November, 1993 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily

waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 7149/2013 which was decided on 19.9.2013 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back

wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wager workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act, Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 12.5.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 21.1.2010 of DFO Palampur to petitioner for reengagement of daily aged workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/S information under RTI Act, Ex. PW1/T copy of plus two certificate of petitioner and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of HP Echo Development Society Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Ranjeet Singh s/o late Sh. Kesarmal Mehra w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? . . .*OPP*.
3. Whether the present claim petition/reference is not maintainable in the present form? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? . . .*OPR*.
5. Whether the claim petition is bad for non joinder of the necessary party as alleged? . . .*OPR*.
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is

also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Ranjeet Singh figures at serial no.77 who is shown to have been appointed on April, 1998 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1998 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. November, 1993 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was

under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/Q dated 12.5.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through its officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo- German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco-Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project. Not only this, on the analogy of case of Bishan Dass as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in the above stated judgment the Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal*

act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments”.

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO.3 & 5

19. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO.4

20. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing cum- Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved

as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 235/2013
Date of Institution : 09.12.2013
Date of decision : 29.04.2015

Shri Jaspal Singh Rana s/o Shri Suba Singh, r/o Village & P.O. Sai, Tehsil Palampur, Distt. Kangra, H.P. . .Petitioner.

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P. . .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.\

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D. A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Jaspal Singh Rana S/O Sh. Suba Singh, R/O Village & Post Office Sai, Tehsil Palampur, Distt. Kangra, H.P. by The Divisional Forest Officer, Palampur, Distt. Kangra, H.P. w.e.f.31.3.2006 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. 08.8.1998 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to

reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 7149/2013 which was decided on 19.9.2013 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of

employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wager workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 21.1.2010 of DFO Palampur to petitioner for reengagement of daily waged workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/S mandays chart of petitioner, Ex. PW1/T information under RTI Act and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of H.P. Echo- Development Society, Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Jaspal Singh s/o Sh. Suba Singh w.e.f. 31 03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged? ..OPP.

2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? . .*OPP*.
3. Whether the present claim petition/reference is not maintainable in the present form? . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? . .*OPR*.
5. Whether the claim petition is bad for non joinder of the necessary party as alleged? . .*OPR*.
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied

upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Jaspal Singh Rana figures at serial no.80 who is shown to have been appointed on 08.8.1998 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1998 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. August, 1998 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the

project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/Q dated 20.2.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the

governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through its officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo-German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project. Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments"*.

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District

Attorney has relied upon the judgment of Hon'ble Apex Court titled as titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO. 3 & 5

19. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO. 4

20. Id. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed

by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref . No. : 222/2013
Date of Institution : 09.12.2013
Date of decision : 29.04.2015

Shri Desh Raj s/o Shri Khiyali Ram, r/o Village Tinna, P.O. Balakrupi, Tehsil Palampur,
Distt. Kangra, H.P. . . *Petitioner.*

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P. . . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Desh Raj S/O Sh. Khiyali Ram R/O Village Tinna, P.O. Balakrupi, Tehsil Palampur, Distt. Kangra, H.P. by The Divisional Forest Officer, Palampur, Distt. Kangra, H.P. w.e.f.31.3.2006 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. 1994 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner alongwith other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently he submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e.

Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 7149/2013 which was decided on 19.9.2013 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated

any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wager workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 12.5.2009 of DFO Palampur to petitioner for reengagement of daily waged workers of IGCP Palampur, Ex. PW1/S information under RTI Act and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of H.P. Echo- Development Society, Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Desh Raj s/o Sh. Khiyali Ram w.e.f. 31 03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged? ..OPP.
2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? ..OPP.
3. Whether the present claim petition/reference is not maintainable in the present form? ..OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? ..OPR.

5. Whether the claim petition is bad for non joinder of the necessary party as alleged?
..OPR.
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in crossexamination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Desh Raj figures at serial no.22 who is shown to have been appointed on 19.10.1993 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1993 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. 1994 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well

as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 20.2.2009 by Divisional Forest Officer, Palampur letter Ex. PW1/Q in which willingness of the petitioner was sought on or before 10.3.2009 and prior to it letter Ex. PW1/R dated 12.5.2010 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through it officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo- German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar

Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project. Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments"*.

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in

Deepali Gundu Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO.3 & 5

19. Both these issues were not pressed by ld. Dy. D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO. 4

20. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. Dy. D.A., ld. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing cum- Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room. Announced in the open Court today this 29th day of April, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 128/2014
Date of Institution : 06.3.2014
Date of decision : 29.04.2015

Shri Sandeep Rana s/o late Sh. Goverdhan Singh, r/o Village & P.O. Ghugar, Tehsil Palampur, Distt. Kangra, H.P. . .*Petitioner.*

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P. . .*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Sandeep Rana S/O Late Sh. Goverdhan Singh R/O Village & P.O. Ghugar, Tehsil Palampur, Distt. Kangra, (H.P.) w.e.f. 31.3.2006 by the Eco Development Society/Indo German Changer Project (I.G.C.P.), Palampur without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. 01.12.1993 by forest department but no appointment order was issued and at the same time no terms and

conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for

adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P. consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP

Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wagger workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R information under RTI Act and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of HP Eco Development Society Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Sandeep Rana s/o late Sh. Goverdhan Singh w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? . . .*OPP.*
3. Whether the present claim petition/reference is not maintainable in the present form? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? . . .*OPR.*
5. Whether the claim petition is bad for non joinder of the necessary party as alleged? . . .*OPR.*
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner was employed in IGCP Palampur a foreign aided project besides the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that IGCP Palampur had been closed in 2006 and on the closure of project, the Eco-Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought

to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1, it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Sandeep Singh Rana figures at serial no.53 who is shown to have been appointed on May, 1995 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1995 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. December, 1993 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties. Moreover, no official of Eco- Development Society or IGCP has been examined by respondent to negate the claim of petitioner.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 20.2.2009 by Divisional Forest Officer, Palampur letter Ex. PW1/Q in which willingness of the petitioner was sought on or before 10.3.2009 and intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was

assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by Id. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. he was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through it officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo-German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project rather it is the State Govt. which is liable to redress grievance of the petitioner. However, Divisional Forest Officer Palampur who is employee of State Forest Department was essentially involved in project work in question and also saddled with the responsibility of taking charge of entire project as stated in foregoing paras, could be in law fastened with the liability of satisfying award on behalf of IGCP Palampur. Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments"*.

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain his and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO.3 & 5

19. Both these issues were not pressed by ld. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent. **ISSUE NO.4**

20. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. Dy. D.A., ld. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing cum- Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2015.

By order,
K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 224/2013
Date of Institution : 09.12.2013
Date of decision : 29.04.2015

Shri Kalyan Chand s/o Shri Hari Ram, r/o Village Lanjehar, P.O. Rajhun, Tehsil Palampur,
 Distt. Kangra, H.P. . .Petitioner.

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P. . .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Kalyan Chand S/O Sh. Hari Ram R/O Village Lanjehar, P.O. Rajhun, Tehsil Palampur, Distt. Kangra, H.P. by The Divisional Forest Officer, Palampur, Distt. Kangra, H.P. w.e.f.31.3.2006 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. 22.7.1993 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b)

of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 7149/2013 which was decided on 19.9.2013 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well

as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wage workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 21.1.2010 of DFO Palampur to petitioner for reengagement of daily aged workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/S

mandays chart of petitioner, Ex. PW1/T letter dated 12.5.2009 from DFO Palampur to petitioner, Ex. PW1/U information under RTI Act and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of HP Echo Development Society Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Kalyan Chand s/o Sh. Hari Ram w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged? ...*OPP*.

2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? ...*OPP*.

3. Whether the present claim petition/reference is not maintainable in the present form? ...*OPR*.

4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? ...*OPR*.

5. Whether the claim petition is bad for non joinder of the necessary party as alleged? ...*OPR*.

6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Kalyan Singh figures at serial no.12 who is shown to have been appointed on 22.7.1993 and continued to work till 2006 when he was disengaged on account of closure of project. A bare

glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1993 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. July, 1993 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21st October, 2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/Q dated 20.2.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that this case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by Id. Dy. D.A. representing respondent that

SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through its officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo- German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project. Not only this, on the analogy of case of Bishan Dass as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore

the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in the above stated judgment the Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments"*.

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO.3 & 5

19. Both these issues were not pressed by ld. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO.4

20. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. Dy. D.A., ld. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even

longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs. \

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2015.

By order,
K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 125/2014
Date of Institution : 06.3.2014
Date of decision : 29.04.2015

Shri Parkash Chand s/o Shri Chatru Ram, r/o Village Bandla, P.O. Nachhir, Tehsil Palampur, Distt. Kangra, H.P. . . *Petitioner.*

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P.

. . Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Parkash Chand S/O Sh. Chatru Ram R/O Village Bandla, P.O. Nachhir, Tehsil Palampur, Distt. Kangra, (H.P.) w.e.f. 31.3.2006 by the Eco Development Society/Indo German Changer Project (I.G.C.P.), Palampur without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. 02.7.1993 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts

existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non

availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wage workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act, Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R information under RTI Act, Ex. PW1/S mandays chart of petitioner, and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of HP Eco Development Society Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

Whether retrenchment of the services of Sh. Parkash Chand s/o Sh. Chatru Ram w.e.f. 31 03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged?

..OPP.

If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? OPP Whether the present claim petition/reference is not maintainable in the present form?

..OPR.

Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect?

..OPR.

Whether the claim petition is bad for non joinder of the necessary party as alleged?

..OPR.

Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner was employed in IGCP Palampur a foreign aided project besides the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that IGCP Palampur had been closed in 2006 and on the closure of project, the Eco-Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the

continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1, it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Parkash Chand figures at serial no.7 who is shown to have been appointed on 02.7.1993 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1993 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. July, 1993 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the

project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties. Moreover, no official of Eco- Development Society or IGCP has been examined by respondent to negate the claim of petitioner.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 20.2.2009 by Divisional Forest Officer, Palampur letter Ex. PW1/Q in which willingness of the petitioner was sought on or before 10.3.2009 and intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. he was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the

governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through its officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo- German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project rather it is the State Govt. which is liable to redress grievance of the petitioner. However, Divisional Forest Officer Palampur who is employee of State Forest Department was essentially involved in project work in question and also saddled with the responsibility of taking charge of entire project as stated in foregoing paras, could be in law fastened with the liability of satisfying award on behalf of IGCP Palampur. Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments"*.

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of

having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain his and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO. 3 & 5

19. Both these issues were not pressed by Ld. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO. 4

20. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Dy. D.A., Ld. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing cum- Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated

assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2015.

By order,
K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 119/2014
Date of Institution : 26.2.2014
Date of decision : 29.04.2015

Smt. Meenakshi Sharma w/o Shri Arvind Kumar, r/o Village Rodi, P.O. Thakurdwara,
Distt. Kangra, H.P. . . *Petitioner.*

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P. . . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Smt. Meenakshi Sharma W/O Sh. Arvind Kumar, R/O Village- Rodi, P.O. Thakurdwara, Distt. Kangra, (H.P.) w.e.f. 31.3.2006 by the Eco Development Society/Indo German Changer Project (I.G.C.P.), Palampur without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that she had been engaged on daily waged basis on muster roll w.e.f. 02.7.1993 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides she had also worked with Bishan Dass and Sushil Kumar and that she continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to her utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about her retrenchment, she was informed that Government had decided to close the IGCP Palampur and her services were no more required. It is claimed that at the time of her unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169

daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed her willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but her services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua her illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and her appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as

beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at her sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wage workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 21.1.2010 of DFO Palampur to petitioner for reengagement of daily aged workers of IGCP Palampur and IWDP (Hills) Kandi Area Ex. PW1/S mandays chart of petitioner and others, Ex. PW1/T letter dated 29.3.2010 from Engineer-in-Chief to The Pr. Chief Conservator of Forests for reengagement of daily aged workers of IGCP Palampur and IWDP (Hills), Ex. PW1/U information under RTI Act and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved her affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of HP Eco Development Society Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my Id. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Meenakshi Sharma w/o Sh. Arvind Kumar w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged? ..*OPP.*
2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? ..*OPP.*
3. Whether the present claim petition/reference is not maintainable in the present form? ..*OPR.*

4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? ..OPR.
5. Whether the claim petition is bad for non joinder of the necessary party as alleged? ..OPR.
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : Unpressed

Issue No. 4 : No

Issue No. 5 : Unpressed

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner was employed in IGCP Palampur a foreign aided project besides the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that IGCP Palampur had been closed in 2006 and on the closure of project, the Eco-Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that her employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1, it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Meenakshi Sharma figures at serial no.23 who is shown to have been appointed on 01.11.1993 and continued to work till 2006 when she was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1993 till 2006 immediately prior to her retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that she had worked on daily wage basis on muster roll w.e.f. July, 1993 without any appointment order or without settlement of any terms and conditions of her service and that she had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that she had worked with forest department however has denied that she has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but her seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to her office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to her office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties. Moreover, no official of Eco- Development Society or IGCP has been examined by respondent to negate the claim of petitioner.

15. The plea of petitioner further remains that after her retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well

as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/Q dated 20.2.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that her case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for her case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on her termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. she was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through it officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, IndoGerman Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar

Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective that it was foreign aided project rather it is the State Govt. which is liable to redress grievance of the petitioner. However, Divisional Forest Officer Palampur who is employee of State Forest Department was essentially involved in project work in question and also saddled with the responsibility of taking charge of entire project as stated in foregoing paras, could be in law fastened with the liability of satisfying award on behalf of IGCP Palampur. Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, her termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested her entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving her of the obligation to pay back wages including emoluments"*.

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that she was employed as agriculturist. This would also establish that after her retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely

differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from her agricultural pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after her retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO. 3 & 5

19. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO. 4

20. Id. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing cum- Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall

be entitled to seniority and continuity in service from the date of her illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 124/2014
Date of Institution : 06.3.2014
Date of decision : 29.04.2015

Smt. Meenakshi Sood d/o Shri Trilok Chand Sood, r/o Village Bandla, P.O. Nachhir, Tehsil Palampur, Distt. Kangra, H.P. . .Petitioner.

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P. . .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Smt. Meenakshi Sood D/O Sh. Trilok Chand Sood, R/O Village Bandla, P.O. Nachhir, Tehsil Palampur, Distt. Kangra, H.P. w.e.f. 31.3.2006 by the Eco Development Society/Indo German Changer Project (I.G.C.P.), Palampur without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that she had been engaged on daily waged basis on muster roll w.e.f. 03.3.1993 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides she had also worked with Bishan Dass and Sushil Kumar and that she continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to her utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about her retrenchment, she was informed that Government had decided to close the IGCP Palampur and her services were no more required. It is claimed that at the time of her unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed her willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but her services had been unlawfully terminated by respondent department without complying the

mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua her illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and her appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at her sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director

IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wage workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 21.1.2010 of DFO Palampur to petitioner for reengagement of daily aged workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/S mandays chart of petitioner and others, Ex. PW1/T letter dated 29.3.2010 from Engineer-in-Chief to The Pr. Chief Conservator of Forests for reengagement of daily aged workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/U information under RTI Act, Ex. PW1/V letter dated 4.12.1992 and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved her affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of HP Eco Development Society Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Smt. Meenakshi Sood d/o Sh. Trilok Chand w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged? ..OPP.
2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? ..OPP.
3. Whether the present claim petition/reference is not maintainable in the present form? ..OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? ..OPR.
5. Whether the claim petition is bad for non joinder of the necessary party as alleged? ..OPR.
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : Unpressed

Issue No. 4 : No

Issue No. 5 : Unpressed

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner was employed in IGCP Palampur a foreign aided project besides the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that IGCP Palampur had been closed in 2006 and on the closure of project, the Eco-Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that her employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that

petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1, it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Meenakshi Sood figures at serial no.2 who is shown to have been appointed on 03.3.1993 and continued to work till 2006 when she was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1993 till 2006 immediately prior to her retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that she had worked on daily wage basis on muster roll w.e.f. March, 1993 without any appointment order or without settlement of any terms and conditions of her service and that she had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that she had worked with forest department however has denied that she has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but her seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to her office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to her office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties. Moreover, no official of Eco- Development Society or IGCP has been examined by respondent to negate the claim of petitioner.

15. The plea of petitioner further remains that after her retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated

21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/Q dated 20.2.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that her case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for her case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on her termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. she was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through it officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo- German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project rather it is the State Govt. which is liable to redress grievance of the petitioner. However, Divisional Forest Officer Palampur who is

employee of State Forest Department was essentially involved in project work in question and also saddled with the responsibility of taking charge of entire project as stated in foregoing paras, could be in law fastened with the liability of satisfying award on behalf of IGCP Palampur. Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, her termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested her entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving her of the obligation to pay back wages including emoluments"*.

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that she was employed as agriculturist. This would also establish that after her retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from her agricultural pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the foregoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after her retrenchment but was

liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO.3 & 5

19. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO.4

20. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of her illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 126/2014
Date of Institution : 06.3.2014
Date of decision : 29.04.2015

Shri Yash Pal s/o Shri Jaishi Ram, r/o Village Lahla, P.O. Hangloh, Tehsil Palampur, Distt. Kangra, H.P. . . . *Petitioner.*

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P. . . . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Yash Pal S/O Sh. Jaishi Ram, R/O Village Lahla, P.O. Hangloh, Tehsil Palampur, Distt. Kangra, (H.P.) w.e.f. 31.3.2006 by the Eco Development Society/Indo German Changer Project (I.G.C.P.), Palampur without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. 01.8.1993 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in

continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as

worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wage workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act,

Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 21.1.2010 of DFO Palampur to petitioner for reengagement of daily aged workers of IGCP Palampur and IWDP (Hills) Kandi Area Ex. PW1/S mandays chart of petitioner, Ex. PW1/T information under RTI Act and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of HP Eco Development Society Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Yash Pal s/o Sh. Jaishi Ram w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged?
..OPP.
2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for?
..OPP.
3. Whether the present claim petition/reference is not maintainable in the present form?
..OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect?
..OPR.
5. Whether the claim petition is bad for non joinder of the necessary party as alleged?
..OPR.
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS**ISSUES NO. 1 AND 2**

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner was employed in IGCP Palampur a foreign aided project besides the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that IGCP Palampur had been closed in 2006 and on the closure of project, the Eco-Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in crossexamination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1, it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of

petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Yash Pal figures at serial no.14 who is shown to have been appointed on 01.8.1993 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1993 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. August, 1993 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties. Moreover, no official of Eco- Development Society or IGCP has been examined by respondent to negate the claim of petitioner.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/Q dated 20.2.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute

on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. he was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through it officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo- German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project rather it is the State Govt. which is liable to redress grievance of the petitioner. However, Divisional Forest Officer Palampur who is employee of State Forest Department was essentially involved in project work in question and also saddled with the responsibility of taking charge of entire project as stated in foregoing paras, could be in law fastened with the liability of satisfying award on behalf of IGCP Palampur. Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance

of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments"*.

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain his and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO.3 & 5

19. Both these issues were not pressed by Ld. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent. **ISSUE NO.4**

20. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that

retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2015.

By order,
K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 127/2014
Date of Institution : 06.3.2014
Date of decision : 29.04.2015

Shri Suneel Kumar s/o Sh. Sant Ram, r/o Village Kharoth, P.O. Ballah, Tehsil Palampur,
Distt. Kangra, H.P. . .Petitioner.

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P. . .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Suneel Kumar, Village Kharoth, P.O. Ballah, Tehsil Palampur, Distt. Kangra, H.P. w.e.f. 31.3.2006 by the Eco Development Society/Indo German Changer Project (I.G.C.P.), Palampur without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. 1993 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief

Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wage worker workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 21.1.2010 of DFO Palampur to petitioner for reengagement of daily aged workers of IGCP Palampur and IWDP (Hills) Kandi Area Ex. PW1/S mandays chart of petitioner, Ex. PW1/T information under RTI Act and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of HP Eco Development Society Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Suneel Kumar w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? . . .*OPP*.
3. Whether the present claim petition/reference is not maintainable in the present form? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? . . .*OPR*.
5. Whether the claim petition is bad for non joinder of the necessary party as alleged? . . .*OPR*.
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner was employed in IGCP Palampur a foreign aided project besides the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that IGCP Palampur had been closed in 2006 and on the closure of project, the Eco-Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no

appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1, it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Suneel Kumar figures at serial no.1 who is shown to have been appointed on 08.1.1993 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1993 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. 1993 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the

then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties. Moreover, no official of Eco- Development Society or IGCP has been examined by respondent to negate the claim of petitioner.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/Q dated 20.2.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the

Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. he was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through it officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo- German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project rather it is the State Govt. which is liable to redress grievance of the petitioner. However, Divisional Forest Officer Palampur who is employee of State Forest Department was essentially involved in project work in question and also saddled with the responsibility of taking charge of entire project as stated in foregoing paras, could be in law fastened with the liability of satisfying award on behalf of IGCP Palampur. Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the*

employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments”.

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. **Ld. Dy. District Attorney** has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain his and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO. 3 & 5

19. Both these issues were not pressed by **Ld. Dy.D.A.** at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO. 4

20. **Ld. Dy. D.A.** representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by **Ld. Dy. D.A.**, **ld. counsel/AR** for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing cum- Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved

as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.
Announced in the open Court today this 29th day of April, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 130/2014
Date of Institution : 06.3.2014
Date of decision : 29.04.2015

Shri Achhar Singh s/o Shri Dhani Ram, r/o Village Bhadyara, P.O. Chauntra, Tehsil Joginder Nagar, Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P. . . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Achhar Singh S/O Sh. Dhani Ram, R/O village Bhadyara, P.O. Chauntra, Tehsil Joginder Nagar, Distt. Mandi, (H.P.) w.e.f. 31.3.2006 by the Eco Development Society/Indo German Changer Project (I.G.C.P.), Palampur without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. 01.2.1994 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to

reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also

asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wage workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 21.1.2010 of DFO Palampur to petitioner for reengagement of daily aged workers of IGCP Palampur and IWDP (Hills) Kandi Area Ex. PW1/S mandays chart of petitioner, Ex. PW1/T information under RTI Act and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of HP Eco Development Society Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Achhar Singh s/o Sh. Dhani Ram w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged? ..*OPP.*
2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? ..*OPP.*

3. Whether the present claim petition/reference is not maintainable in the present form?
..OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect?
..OPR.
5. Whether the claim petition is bad for non joinder of the necessary party as alleged?
..OPR.
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner was employed in IGCP Palampur a foreign aided project besides the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that IGCP Palampur had been closed in 2006 and on the closure of project, the Eco-Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of

funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1, it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Achhar Singh figures at serial no.31 who is shown to have been appointed on 01.2.1994 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1994 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. February, 1994 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of

workman and employer between the parties. Moreover, no official of Eco- Development Society or IGCP has been examined by respondent to negate the claim of petitioner.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/Q dated 20.2.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. he was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through it officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held

and powers were delegated to Dy. Director, Indo- German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project rather it is the State Govt. which is liable to redress grievance of the petitioner. However, Divisional Forest Officer Palampur who is employee of State Forest Department was essentially involved in project work in question and also saddled with the responsibility of taking charge of entire project as stated in foregoing paras, could be in law fastened with the liability of satisfying award on behalf of IGCP Palampur. Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments"*.

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District

Attorney has relied upon the judgment of Hon'ble Apex Court titled as titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain his and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO. 3 & 5

19. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO.4

20. Id. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed

by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT CUM- INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. 96/ 2014

Shri Shashi Pal Sharma s/o Shri Kesar Chand, r/o Village Magrauni, P.O. Dhaneta, Tehsil Nadaun, District Hamirpur, H.P. *. .Petitioner.*

Versus

The Employer/Executive Director, M/S MBD Printographics (P) Ltd. Paper Manufacturing Unit, Ram Nagar, Industrial Area, Gagret, Tehsil Amb, District Una, H.P. (Factory Office), M/S MBD Printographics (P) Ltd. Paper Manufacturing Unit, Gulab Bhawan, 6, Bahadur Shah Zafar Marg, New Delhi-110112 (Corporate Office), M/S MBD Printographics (P) Ltd. Paper Manufacturing Unit, New Railway Road, Jalandhar-144001 (Regd. Office).

. .Respondent.

27-04-2015 Present: None for the petitioner.

Sh. Santosh Kumar, Adv. vice of Sh. R.K. Bhardwaj, Adv. csl. for the respondent.

Case called several times but none has appeared on behalf of the petitioner. It is 12.35 A.M. Be awaited and put up after lunch hours at 2.40 PM.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

27-04-2015 Present: None for the petitioner.

Sh. Santosh Kumar, Adv. vice of Sh. R.K. Bhardwaj, Adv. csl. for the respondent.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.50 P.M. None appearance of petitioner or his authorised representative today despite knowledge of hearing of case is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution. Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the order be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. 184/ 2013

Smt. Trishla Devi w/o Shri Rajinder Pal, r/o V.P.O. Mubarakpur, Tehsil Amb, District Una,
H.P. . .Petitioner.

Versus

1. Sh. Suresh Kumar Kaushal, C/O M/S Tigaksha Metalics Pvt. Ltd., Plot No. 16, Ram Nagar, Industrial Area Gagret, Tehsil Amb, District Una, H.P.(Labour Contractor).
2. The Managing Director/employer, M/S Tigaksha Metalics Pvt. Ltd., Plot No. 16, Ram Nagar, Industrial Area Gagret, Tehsil Amb, District Una, H.P. (Principal Employer) .
...Respondents.

27-04-2015 Present: None for the petitioner.

Respondent no. 1 in person.

Sh. Rajesh Kosh, Law Officer for the respondent no.2. Case called several times but none has appeared on behalf of the petitioner. It is 12.10 A.M. Be awaited and put up after lunch hours at 2.30 PM.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P

27-04-2015 Present: None for the petitioner.

Respondent no.1 in person.

Sh. Rajesh Kosh, Law Officer for the respondent no.2. Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.43 P.M. None appearance of petitioner or his authorised representative today despite knowledge of hearing of case is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the order be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 287/2014

Smt. Mamta Devi through General Secretary and authorized representative, Forest and Forest Corporation Workers Union, House No.100/3, Roda Sector-2, Bilaspur, District Bilaspur, H.P.
..Petitioner.

Versus

Divisional Manager, Forest Working Division, Hamirpur, District Hamirpur, H.P.
..Respondent.

22-04-2015 Present: Sh. S.S. Sippy, A.R. for the petitioner.

Sh. Sanjeev Singh Rana, D.D.A. for the respondent.

Sh. Kashmir Chand, Forest Guard of Corporation.

Heard. Statement of Authorised Representative of the petitioner for not pressing of reference is recorded separately and placed on file.

2. In view of statement made by Authorised Representative for the petitioner, the claim of the petitioner is disposed of as withdrawn and thus the demand raised by Smt. Mamta Devi (petitioner) through her authorized representative has been fulfilled by the Divisional Manager, Forest Working Division, Hamirpur (respondent) as per policy of State Govt.

3. Ordered accordingly. Parties to bear their own costs.
4. The reference is answered in the aforesaid terms.
5. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
7. Be consigned to the Records after needful completion.
8. Announced:

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT -CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. 374 / 2014

Sh. Suresh Kumar s/o Shri Man Singh, r/o Village Bag, P.O. Tramat, Tehsil Joginder Nagar, District Mandi, H.P. . .*Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P. . .*Respondent.*

04-05-2015 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due service as claimant/petitioner has sent separate application dated 05-01-2015 for withdrawal of case. It is 11.40 A.M. Be awaited and put up after lunch hours at 2.30 PM.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

04-05-2015 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.37 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that

petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the order be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 223/2013
Date of Institution : 09.12.2013
Date of decision : 06.05.2015

Shri Prakam Ram s/o Shri Saran Dass, r/o Village Nain, P.O. & Tehsil Baijnath, Distt. Kangra, H.P. . . *Petitioner.*

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P. . . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

Whether retrenchment of the services of Sh. Prakam Ram S/O Sh. Saran Dass R/O Village Nain, P.O. & Tehsil Baijnath, Distt. Kangra, H.P. by The Divisional Forest Officer, Palampur, Distt. Kangra, H.P. w.e.f.31.3.2006 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. October,

1998 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the respective Government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently he submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 7149/2013 which was decided on 19.9.2013 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked

upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which too as it was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wager workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 02.01.2009 information under RTI Act and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C HP Echo Development Society Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur, Ex. RW1/E copy of retrenchment notice dated 24.2.2006 to petitioner and closed evidence.

8. I have heard the Authorized Representative as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Prakam Ram s/o Sh. Saran Dass w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged? ...OPP.
2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? ...OPP.
3. Whether the present claim petition/reference is not maintainable in the present form?OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? ...OPR.
5. Whether the claim petition is bad for non joinder of the necessary party as alleged? ...OPR.
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : Unpressed

Issue No. 4 : No

Issue No. 5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP

Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1, it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner figures at serial no.9 who is shown to have been appointed on February, 1999 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B1 to B12 would reveal that petitioner had worked for more than 240 days ever since 1999 till 2006 as is also evident from Ex. RW1/E.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. January, 1994 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice aforesaid was issued in 2006. RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner contrary to Ex. RW1/E which is for retrenchment as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. Significantly, in cross-examination RW1 the respondent has admitted that except year 2006, petitioner had worked for 240 days. In view of such admission of contesting respondent, this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Ld. counsel for petitioner/claimant has contended with

vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through its officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo-German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective that it was foreign aided project. Not only this, on the analogy of case of Bishan Dass as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void abinitio. It was specifically held by the Hon'ble Apex Court that if the workman had

completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void abinitio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in the above stated judgment the Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that "if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments".

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 supra since the petitioner was earning from his agricultural pursuits the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO. 3 & 5

19. Both these issues were not pressed by Ld. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO. 4

20. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised

after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel/AR for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has held that delay in raising dispute may be considered by court at the time of granting final relief but in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of May, 2015.

By order,
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 226/2013
Date of Institution : 09.12.2013
Date of decision : 06.05.2015

Shri Kultar Chand s/o Shri Bhawani Chand, r/o Village & P.O. Bijapur, Tehsil Jaisinghpur,
Distt. Kangra, H.P.Petitioner.

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P.Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Kultar Chand S/O Sh. Bhawani Chand R/O Village & Post Office Bijapur, Tehsil Jaisinghpur, Distt. Kangra, H.P. by The Divisional Forest Officer, Palampur, Distt. Kangra, H.P. w.e.f. 31.3.2006 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. 22.8.1994 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the respective Government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional

Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 7149/2013 which was decided on 19.9.2013 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which too as it was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment

order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wage workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 02.1.2014 information under RTI Act, Ex. PW1/R matriculation certificate of petitioner, Ex. PW1/S copy of detailed marks certificate of petitioner and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of HP Echo Development Society Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed by my ld. predecessor on 26.6.2014 for determination.

1. Whether retrenchment of the services of Sh. Kultar Chand s/o Sh. Bhawani Chand w.e.f. 31-03-2006 by the Divisional Forest Officer, Palampur is illegal and unjustified as alleged?*OPP*.
2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation as prayed for? ...*OPP*.
3. Whether the present claim petition/reference is not maintainable in the present form? ...*OPR*.
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? ...*OPR*.
5. Whether the claim petition is bad for non joinder of the necessary party as alleged?*OPR*.
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is

also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Kultar Chand figures at serial no.47 who is shown to have been appointed on 22.8.1994 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1994 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. August, 1994 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was

under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and

other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through its officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo- German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective that it was foreign aided project. Not only this, on the analogy of case of Bishan Dass as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that "if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments".

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as titled as **North East**

Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural pursuits the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO. 3 & 5

19. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO. 4

20. Id. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed

by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of May, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 240/2013
Date of Institution : 09.12.2013
Date of decision : 12.05.2015

Shri Tilak Raj alias Raj Kumar s/o Shri Kirpa Ram, r/o VPO Seri Kothi, Tehsil Sunder Nagar, District Mandi, H.P. *...Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. *....Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Tilak Raj alias Raj Kumar, S/O Shri Kirpa Ram, R/O VPO Seri Kothi, Tehsil Sunder Nagar, District Mandi, H.P., during 2000 to 2001 and in the year 2003 By the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. Brief facts as set up in the claim petition under Section 10 of Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”) filed by the petitioner revealed that petitioner had been engaged as casual labourer in the month of December, 1997 by the respondent whose services had been unlawfully disengaged by the Range Officer, Forest Range Kangoo as per the directions of respondent in the month of April, 1998 without complying with the provisions of the Act. Averments made in the claim petition further reveal that the services of petitioner were terminated by verbal order of the respondent where after petitioner approached the Hon’ble Administrative Tribunal by filing O.A. no.1714/1999 in which the respondents were directed to reengage the petitioner in the same capacity however the said O.A. has been finally dismissed on the ground of jurisdiction and thereafter claimant/petitioner through his counsel raised industrial dispute by raising demand notice dated 28.9.2012. It is contended that petitioner had submitted order dated 7.7.2000 in the office of respondent in the month of August, 2000 and thereafter the petitioner had been reengaged by the respondent but continued to work uninterruptedly till 2003. It is alleged that the services of petitioner were again terminated by respondent giving fictional breaks due to which he could not complete 240 days in the year 2002. The grievances of the claimant/petitioner remains that no notice was served upon petitioner while giving him fictional break and thus fictional break was continued to be given several times from 1998 to 2003. Averments made in the claim petition also reveal that after termination of the services of petitioner S/Sh. Laxmi Dass, Prem Lal, Madhav Ram, Durga Dass, Krishan Lal, Bahadur Singh and Duhlu Ram had been appointed by the respondent at the same place where the services of petitioner were terminated but again the petitioner was not given an opportunity and thus the respondent had violated the provisions of Section 25-H of the Act. It is also alleged that the persons junior to petitioner namely S/Sh./Smt. Mohinder (1.5.1999), Hari Singh (1.7.1999), Ashish Kumar (1.2.2000), Indra (1.11.2000) and Uttam Ram (2004) have been retained continuously without any break and all the above named workers had completed more than 240 days in each calendar year from 2000, 2001 and 2004 respectively who were working under the respondent on regular basis as forest worker in regular pay scale as fixed by the State Government in the class-IV category. It is alleged that petitioner was deprived of his legitimate right to work by issuance of muster roll for the whole month and the same was done with the object that he could not complete 240 days in a calendar year whereas other workers working at same place had been given muster roll for all month. The grievance of the petitioner further remains that as per policy framed by State Government to regularize the services of daily wager who had completed eight years of service in each calendar year for regularization. It is contended that due to fictional breaks petitioner could not be regularized but his colleagues who were also labourers having completing 240 days were regularized. As such, fictional breaks given by respondent fell in definition of unfair labour practice and was primarily unjustified and in violation of provisions of the Act as well as against the policy of State Government for regularization. As such, petitioner claims for setting aside illegal termination/fictional breaks from 1998 to 2001 and 2003 directing respondent to condone the said period of the petitioner in his continuity including regularization and also to pay the wages of breaks period. The petitioner also

claims that the respondent be directed to regularize the services of petitioner after completion of eight years from his initial appointment in regular pay scale w.e.f. 1.1.2006 and pay him all consequential service benefits besides costs of litigation.

3. Respondent resisted the claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner was engaged as casual labourer in the year 1998 to carryout the seasonal forestry works in Kangoo Forest Range of Suket Forest Division where he initially worked for 87 days as was clear from mandays chart and the services of petitioner had never been terminated by the respondent department. It is asserted that petitioner used to come and left the job at his own convenience besides admitted that O.A. no.1714/1999 was filed by petitioner in the year 2000 claiming that his daily waged services had been disengaged by respondent department and the said O.A. was as dismissed. It is claimed that petitioner was reengaged when he was approached for work in the month of November, 2000 and he worked for 53 days and in the year 2001, the petitioner had worked for 181 days and his services had never been terminated by respondent in any manner. No junior to the petitioner was stated to be on the roll of the Division and that daily wagers were called for work subject to availability of works and funds on the principle of 'last come first go'. It is claimed that petitioner had left the job intermittently at his own will as is evident from the mandays chart and that the services of only those daily workers had been regularized who had completed eight years of continuous service with minimum of 240 days in each calendar year as per their seniority and no junior to the petitioner had been regularized and no fictional breaks is stated to be given to the petitioner but the petitioner is stated to have left the job at his sweet will and convenience and worked intermittently who had not completed 240 days in each calendar year from 1998 to 2003. Accordingly, the claim petition is sought to be dismissed stipulating that services of petitioner had never been disengaged by respondent department.

4. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

5. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed the evidence. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri Ajit Kumar Thakur, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B is the mandays chart of petitioner and Pawan Kumar, Piar Singh, Tulsi Ram, Dalumbi Devi, Uttam Ram and Jai Ram, Ex. RW1/C is the mandays chart of Prem Lal, Madhav Ram, Dhaloo Ram and Krishan Lal whereas Exts. RW1/D to RW1/H are the mandays charts of Mohinder Singh, Hari Singh, Ashish Kumar, Smt. Indra and Uttam Ram and closed its evidence.

6. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

7. From the contentions raised, following issues were framed by my ld. predecessor on 9.7.2014 which are as under:

1. Whether time to time termination of the services of Sh. Tilak Raj alias Raj Kumar during the year 2000 to 2003 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and justified? ...OPP.
2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation etc? ...OPP.
3. Relief.

8. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

9. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

10. Admittedly petitioner was initially engaged as casual labourer in the year 1998 and that petitioner was still employed with respondent on the date of reference from appropriate government. The grievance of the petitioner remains that respondent had verbally appointed him and also terminated/disengaged him through Range Officer, Forest Range of Kangoo when petitioner had filed O.A. no.1714/1999 before the Hon'ble Administrative Tribunal which was dismissed on the account of jurisdiction. The grievance of petitioner remains that he was employed as per verbal order in 1998 but no letter of appointment was given. The petitioner has testified on oath by swearing affidavit Ex. PW1/A under Order 18 Rule 4 CPC the manner in which he was initially appointed in the year 1997 when he was disengaged by Range Officer, forest range Kangoo as per the direction of respondent in April, 1998 and thereafter he was employed in pursuance to filing of O.A. no.1714/1999. Further, petitioner continued working till the date of filing of claim petition and that except for years 1998 to 2003, he had worked for more than 240 days. This fact has not been disputed by Shri Ajit Kumar Thakur, DFO in his statement before this court on 7.1.2015 in which he has specifically admitted that in the years 2002 and from 2004 to 2014 the petitioner had completed 240 days in each calendar year. Although, petitioner has admitted in his cross-examination that only those persons have been regularized by govt. who had completed eight years of regular service but has admitted that petitioner was working still with the respondent. It would be also pertinent to refer to mandays chart relied upon by the respondent in which the petitioner is shown to have worked for 87 days in the year 1998, 53 days in 2000, 181 days in the year 2001 and 175 days in 2003 and except these years till now in 2014-2015 the petitioner has worked for more than 240 days in each calendar year. The other labourers namely Mohinder Singh had worked for 304 days in the year 2000, 341 days in 2001, 358 days in 2002 and 240 days in 2003. Similarly Sh. Hari Singh had been given appointment in 2000 when he had worked for 329 days, 245 days in 2001, 270 days in 2002 and 265 days in the year 2003. Ex. RW1/F is the muster roll of Ashish Kumar which showed that the said employee had worked for 323 days in the year 2000, 282 days in 2001, 290 days in 2002 and 265 days in 2003. Similarly Smt. Indra had worked for 31 days in 2000, 285 days in 2001, 270 days in 2002 and 281 days in 2003. Thus, the mandays charts of the above named officials clearly indicate that in the year 2001 to 2002 and 2003 there was sufficient work and funds available with the respondent which belied its plea but the claimant/petitioner was not given work of 30 days in a month whereas other co-workers namely Mohinder Singh, Hari Singh, Ashish Kumar had been given muster roll for more than 300 days in a year. Similarly, in the year 2001 these officials had again been given work for 341 days, 245 days and 282 days respectively and Smt. Indra was also given muster roll for 285 days in the year 2001. All the four workers were given muster roll for more than 240 days in the years 2002 and 2003 respectively as can be gathered from Ex. RW1/D to Ex. RW1/H. Thus, respondent while issuing muster roll had not adopted fair policy rather it had adopted the method of

pick and choose when the respondent allowed some of the labourers more number of days and declined this opportunity similarly situated persons including the petitioner so that petitioner could not have completed 240 days which apparently projects unfair labour practice and the petitioner shall be deemed to be in continuous service as the plea of respondent that petitioner left work of his own and was employed intermittently is not substantiated from any corresponding record showing that petitioner was ever given show cause notice by respondent or any disciplinary action had been taken qua his non attendance in the office for the place of work.

11. It is settled law that abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances as has been held in *State of H.P. vs. Bhatag Ram & Anr.* Reported in 2007 LHLJ 903. There is no iota of evidence on record that petitioner had abandoned the job rather it is uncorroborated testimony of respondent which is not reliable. In so far as the plea of respondent that petitioner was employed in seasonal forestry work also merits rejection in view of overwhelming evidence of record which would show that several workers who had been appointed in 2000 and 2001 were given muster roll for more than 10 months in a year i.e. 300 days or more then how the plea of work being seasonal in nature can be entertained when workers worked throughout the years as stated above. Thus, the plea of seasonal work as stated by the respondent in its reply is nothing but a futile attempt to deny/defeat the claim of petitioner. On the point of violation of the provisions of Section 25-H of the Act is concerned, suffice would be to state here that Mohinder Singh, Hari Singh, Ashish Kumar and Indra had been appointed in the year 2000 whereas the petitioner had been appointed in the year 1998. All the above named daily wagers were still employed with the petitioner but they had never been given any break and thus the petitioner was also discriminated while engaging the persons at the time of termination of the services of the petitioner without any valid or cogent reason instead the object of respondent in giving fictional breaks primarily remained that petitioner did not complete 240 days were required for regularization of his services so as per policy of State Government. As such, it is also held that the respondent had violated the provisions of Section 25-H of the Act while giving fictional breaks to the petitioner arbitrarily discriminating with other casual workers who were similarly situated in view of the above said discussions. Issues no. 1 & 2 are answered in affirmative.

RELIEF

12. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed and reference is accordingly answered in his favour. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors had been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

13. The reference is answered in the aforesaid terms.

14. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

15. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of May, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. 191 / 2015

Sh. Sukh Ram s/o Shri Fagnu Ram, r/o Village Outpur Makan, P.O. Outpur, Tehsil Joginder
Nagar, District Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D., (B&R) Division Joginder Nagar, District Mandi, H.P.
.....*Respondent.*

14-05-2015 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.30 A.M. Be awaited and put up after lunch hours at 2.30 PM.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

14-05-2015 Present : None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.38 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the order be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
14-05-2015

By order
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. 246 / 2014

Sh. Mahender Singh s/o Sh. Sobha Ram, Village-Punjail Khurd, P.O. Sikroha, Tehsil Sadar, District Bilaspur, H.P.*Petitioner.*

Versus

i) M/S GVK Emergency Management & Research Institute, J.P. Motor Building, Village Anji Barog Bye Pass, Solan- 173211 (H.P.) employed through

ii) M/S Adecco Flexi One Workforce Solution Pvt. Ltd., C-127, Basement Level, Satguru Infotech, Phase-VIII, Industrial Area, Mohalli – 160071 (Area Office).*Respondents.*

14-05-2015 Present : None for the petitioner.

Sh. Sandeep Rana, adv. csl. for the respondent no.1.

Sh. Manish Katoch, adv. csl. for the respondent no.2.

Power of attorney has been filed by ld. csl. for the respondent no.1. Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.40 A.M. Be awaited and put up after lunch hours at 2.35 PM.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

14-05-2015 Present : None for the petitioner.

Sh. Sandeep Rana, adv. csl. for the respondent no.1.

Sh. Manish Katoch, adv. csl. for the respondent no.2.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.45 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the order be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
14-05-2015

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. : 333/2014

Smt. Rasilu Devi s/o Shri Gontha Ram, r/o Village Bharan, P.O. Outpur, Tehsil Joginder Nagar, District Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P.*Respondent.*

16-05-2015 Present : Sh. Suresh Kumar Sharma, adv. csl. for the petitioner.

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Heard. Statement of ld. csl. for the petitioner for not pressing of reference is recorded separately and placed on file.

2. In view of statement made by ld. csl. for the petitioner, the claim of the petitioner is disposed of as withdrawn.

3. Ordered accordingly. The parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.

6. The file, after completion be consigned to the records.

Announced:
16.5.2015

By order,
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 248/2013
Date of Institution : 23.12.2013
Date of decision : 23.05.2015

Shri Rakesh Kumar s/o Sh. Chet Ram, r/o Village Parchu, P.O. Sajau Piplu, Tehsil Sarkaghat, Distt. Mandi, H.P. ...Petitioner.

Versus

1. The Superintending Engineer, Electrical Circle, HPPWD, Shimla-9
2. The Executive Engineer, Electrical Division, HPPWD Mandi, H.P.Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

2. “Whether termination of the services of Sh. Rakesh Kumar S/O Sh. Chet Ram R/O Village- Parchu, P.O. Sajau Piplu, Tehsil Sarkaghat, Distt. Mandi, H.P. by i) The Superintending Engineer, Electrical Circle, HPPWD, Shimla-9 & ii) The Executive Engineer, Electrical Division HPPWD Mandi, (H.P.) w.e.f. 01.4.2001 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. In pursuance to receipt of reference aforestated, notices were issued to parties. The claimant/petitioner has filed statement of claim. Brief facts as set up in the claim petition reveal that petitioner had been appointed as electrician/electrical mistry vide appointment order No.PW-ESD-E-4/98-934-28 dated 2.11.1998 issued by Assistant Engineer for 89 days and in pursuance to the said appointment letter, petitioner had joined on 2nd December, 1998 who continued to work uninterruptedly till 31st March, 2001. The grievance of petitioner remains that after completion of 89 days, petitioner continued to remain in service but fictional break had been given from time to time petitioner so that petitioner did not complete 240 days and this practice had been adopted by the respondent department till 31.3.2001. It is alleged that the services of petitioner had been retrenched by Assistant Engineer at the direction of respondent no.2 on 1.4.2001 without following relevant provisions of Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is claimed that while terminating the services of petitioner neither required notice was served nor charge sheet had been raised or any enquiry had been conducted against him and at the same time one month pay in lieu of notice period too was not given. It is alleged that the respondents had also not followed the provisions of Section 25-G of the Act which postulates principle of ‘**Last come First go**’ according to which the workman who joined in the last was to be retrenched first and that the respondents had retained junior persons to that of petitioner and that even after termination of

services of petitioner new appointments have been made without affording any opportunity to the petitioner in violation of the provisions of Section 25-H of the Act alleging further that his retrenchment was wrongly done and assailed decision of the respondents by filing O.A. 353/2001 against his illegal termination before the Hon'ble Administrative Tribunal whereupon the respondent no.2 had issued registered retrenchment notice under Section 25-F of the Act vide letter dated 4.1.2002. It is claimed that petitioner had only worked upto 31st March, 2001 when his services were verbally terminated by the respondent department so the question of termination of services of petitioner w.e.f. 31.3.2002 did not arise at all. The grievance of the petitioner thus remains that notice in question stipulated that retrenchment had been made due to insufficient of work and funds with further assurance that petitioner's services would be reengaged as and when work and funds were available or on his seniority. It is alleged that 36 daily waged workers had been terminated by respondent no.2 along-with petitioner on 1.4.2001. It further transpires from the claim petition that O.A. no.353/2001 filed by petitioner was dismissed on the ground of jurisdiction and the order of dismissal of petition before the Hon'ble Administrative Tribunal was not notified to him by his counsel conducting the case and when the petitioner approached the counsel in the year 2009 i.e. about three years from the date of judgment, petitioner was informed that his case has been dismissed by the Hon'ble Administrative Tribunal, H.P. on the ground of jurisdiction with liberty to the petitioner to approach the appropriate forum for redressal of his grievances. Thereafter petitioner raised the demand notice before Labour-cum-Conciliation Officer, Mandi and conciliation could not be effected as respondents did not accept the demand of petitioner vide report no. 254/10-2300 dated 22.11.2011 failure report was sent to appropriate government which declined to make further reference to Labour Court vide order dated 30.3.2012 whereupon petitioner again filed CWP No. 8242/2012 which had been decided on 29.4.2014 directing appropriate government i.e. Labour Commissioner, H.P. to make reference who forwarded the petitioner's case to the Labour Court and in compliance of the order of the Hon'ble High Court, appropriate government had made reference vide notification dated 6.12.2013. It is alleged that the services of Jeet Singh have been terminated along with petitioner on 1st April, 2007 and later said Jeet Singh was reengaged by respondent no.2 during the conciliation proceedings. The services of Smt. Suman, Harish Kumar and Rakesh Kumar were again engaged by respondent no.2. Thus, alleging the act of respondent in terminating the services of petitioner to be illegal and unjustified, prayer has been made to set aside termination order dated 1.4.2001. It is further prayed that petitioner having not been employed anywhere and not gainfully employed he was entitled for back wages from the date of his illegal termination. Accordingly, petitioner besides praying for setting aside illegal termination dated 1.4.2001 has also prayed that respondent be directed to reinstate petitioner in service with full back wages, seniority and continuity in service with all consequential service benefits.

3. Respondents filed joint reply contested the claim petition inter- alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches and estoppel. On merits admitted that petitioner was engaged as casual labourer on requirement basis for the electrical installation work on daily wages in December, 1998 where he worked till date of March, 2001 intermittently. Factum of fictional breaks having been given by the respondents is emphatically denied. It is also contended that since petitioner had not completed 240 days continuously in a calendar year, question of issuance of show cause notice was not required. It is also asserted that petitioner used to come and work at his own sweet will and at the same time he had abandoned his services and worked as an agriculturist where he was gainfully employed. It has been emphatically denied that any junior to the petitioner had been appointed or retained in service and that only those workmen had been reengaged whose orders were passed by the Labour Court and denied allegation of violation of any provisions of the Industrial Disputes Act, 1947. In so far as the pendency of O.A. no.353/2001 was concerned, it has been admitted that during the pendency of the case notice dated 4.1.2002 under Section 25-G to the petitioner was issued inadvertently instead due to non availability of work and funds the petitioner was disengaged. It is further

reiterated that due to non-availability of work and funds, the services of petitioner had been terminated. It is also alleged that petition filed by the petitioner was dismissed by the Hon'ble Administrative Tribunal, H.P. and that order remained unchallenged and that petitioner had made demand notice at belated stage. It is admitted that petitioner has raised industrial dispute which too was dismissed by Labour Commissioner, H.P. vide order dated 30th March, 2012. Factum of failure of conciliation proceeding was not disputed and petition was accordingly sought to be dismissed.

4. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

5. In order to prove his case, petitioner has proved in evidence his own affidavit Ex. PW1/A under Order 18 Rule 4 CPC tendered/proved retrenchment notice Ex. PW1/B copy of memorandum dated 2.11.2009, Ex. PW1/C copy of retrenchment notice, Ex. PW1/D copy of letter dated 4.9.2006 from the Financial Commissioner-cum-Secretary (PW) to the Engineer-in-Chief (IPH) regarding maintenance of casual registers/casual cards of daily rated workmen-deployment and termination of such workmen, Ex. PW1/E is the letter dated 14th September, 2014 pertaining providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 and 30 days with intermittent breaks, Ex. PW1/F is the copy of order dated 3.3.2006 passed in O.A. No.353/2001, Ex. PW1/G is the demand notice of petitioner under Section 2-A of the Industrial Disputes Act, 1947, Ex. PW1/H is the copy of order dated 30th March, 2012, Ex. PW1/I is the copy of order dated 29.4.2013 of Hon'ble High Court passed in CWP no.8242/2012 and Ex. PW1/J is the copy of working days of Smt. Suman and closed the evidence. On the other hand, the respondent had examined Shri Sanjay Kumar the then Executive Engineer, Electrical Division, HPPWD, Mandi tendered/proved Ex. RW1/B which is the copy of mandays chart of petitioner and Ex. RW1/C is the copy of order dated 30th March, 2012 which corresponds to Ex. PW1/H and closed the evidence.

6. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

7. From the contentions raised, following issues were framed by my ld. predecessor on 9.7.2014 which are as under:

13. Whether the termination of services of Sh. Rakesh Kumar s/o Sh. Chet Ram by the Executive Engineer, Electrical Division, HPPWD Mandi w.e.f. 01.04.2001 is illegal and unjustified as alleged? ...*OPP*.

14. If issue No.1 is decided in affirmative, to what amount of back wages, seniority, past service benefits and compensation are entitled to the petitioner? ...*OPP*.

15. Whether the petitioner is estopped from preferring the claim. If so, its effect? ...*OPR*.

16. Relief.

8. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS**ISSUES NO. 1 AND 2**

9. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

10. In so far as the plea of claimant/petitioner qua violation of the provisions of Section 25-F of the Act is concerned, it would be relevant to consider mandays chart Ex. RW1/B. It is evident from this document that petitioner was appointed in December, 1998 when he worked for 29 days, in the year 1999 from January till December he had worked for 232 days, in the year 2000 from January to December he had worked for 231 days and in the year of his termination i.e. 2001 petitioner had worked only for about three months when he worked for 58 days. In the witness box petitioner has specifically admitted that he had not worked for 240 days in any of the years he remained employed with respondent. Ld. Dy. D.A. for the respondent has contended with vehemence that for applicability of Section 25-F, it was required to establish by claimant/petitioner that petitioner had worked for 240 days immediately preceding his termination. It is also contended that if version of the petitioner is taken as correct he admits so who had been disengaged vide verbal order on 31.3.2001 whereas the case of the respondents remained that petitioner had not worked for 240 days immediately preceding his termination and that the respondents had also issued notice Ex. PW1/C vide which paucity of work and funds were shown to be the prime cause for retrenchment and accordingly termination of petitioner was made w.e.f. 31.1.2001. Thus, it is established from evidence led by petitioner that services of petitioner was terminated on 31st March, 2001 and thus question of issuance of notice for termination in the year 2002 by respondents had no value in the eyes of law.

11. In so far as plea qua non compliance of the provisions of Section 25-F of the 'Act' was concerned, Ld. Authorized Representative/counsel for the petitioner has repudiated the arguments of Ld. Dy. D.A. He has relied upon judgment of Hon'ble Apex Court reported in **2003 LLR 1097** titled as **M/s. U.P. Drugs & Pharmaceuticals Co. Ltd. vs. Ramanuj Yadav & Ors.** In the aforesaid judgment Hon'ble Apex Court while dealing with the Uttar Pradesh Industrial Disputes Act, 1947 Section 6N read with 2(g) held that the period of 240 days would mean 240 days **in any calendar year** preceding termination. It was observed by the Hon'ble Apex Court that termination of the workmen having not worked for 240 days in preceding 12 months a year but having worked for similar duration and in earlier years would be tenable to illegal retrenchment and for nonpayment of retrenchment compensation, workman would be entitled to reinstatement since the U.P. Industrial Disputes Act does not provide word 'preceding' 12 months. It was observed that Section 2(g) of U.P. Industrial Disputes Act does not require a workman to avail the benefit of the deeming provision of completion of one year of continuous service in the industry, to have worked for 240 days during preceding period of 12 calendar months and that the word preceding has been used in Section 25-B as incorporated in the year 1964 but Section 2(g) does not use the word 'preceding'. Since the Hon'ble Apex Court has not dealt with the provisions of Industrial Disputes Act rather under the Uttar Pradesh Industrial Disputes Act, 1947 in which there was no requirement of 240 days preceding the date of retrenchment or termination as this period could be counted in any of the years in which workman had worked but in the case in hand before this court provisions of Industrial Disputes Act would only be attracted and not the U.P. Industrial Disputes Act which is concerning U.P. State. Thus, provisions of Industrial Disputes Act require working of workman for 240 days immediately preceding his termination but in the case in hand petitioner himself admits on oath to have not worked for 240 days as stated by him on oath and same at time mandays has not been disputed by petitioner also show that in particular year i.e. on being terminated in March, 2001 preceding 12 months petitioner had worked for 212 days only and thus requirement of having worked for 240 days was not at all established. Since the petitioner had failed to have proved to

have worked for 240 days, certainly provisions of Section 25-F of the Industrial Disputes Act did not apply in his case and it cannot be stated that respondents while terminating the services of petitioner was required to comply with the provisions of Section 25-F of the Act as petitioner had not factually worked for 240 days.

12. Another allegation of petitioner against the respondents remained that persons junior to petitioner in service were still continuing whereas petitioner had been wrongly retrenched from service. It has been argued that provisions of Section 25G-G and Section 25-H of Industrial Disputes Act have not been complied. Further reliance has been placed upon cross-examination of respondent Shri Sanjay Kumar RW1, Executive Engineer, Electrical Division, Mandi. In his cross-examination, RW1 has admitted that he did not know that 105 workmen had been retrenched on 1.4.2001. He has specifically admitted that Smt. Suman had worked with petitioner but she too was removed from service in 2001. Not only this, respondent has admitted that one Jeet Singh was appointed in May, 1999 who was also removed from service on 31.3.2001 but was reemployed in conciliation proceedings. Stepping into witness box as PW1 petitioner has deposed that initially he had approached the Hon'ble Administrative Tribunal, H.P. when his services had been retrenched but the said petition filed by him was dismissed on the ground of jurisdiction. In his affidavit under Order 18 Rule 4 CPC petitioner has alleged that respondent had violated the principle of '**last come first go**' as the persons who were junior to him have been retained in service and that even after the termination of the services of petitioner, new employees were appointed by the respondent without giving an opportunity to the petitioner and thus respondent had violated the provisions of Section 25-H of the Act. Ex. PW1/J is the mandays chart of Smt. Suman who is shown to have been appointed in August, 1999 whereas petitioner had been appointed in December, 1998. As per appointment order Ex. PW1/B that Smt. Suman was junior to petitioner. Even Jeet Singh was appointed in May, 1999 was also junior and both these persons appeared to have been disengaged on the same date but were reappointed. It has been stated by RW1 in his cross-examination that Jeet Singh was appointed in conciliation proceedings and that Smt. Suman too was employed which showed that while disengaging petitioner his seniority was ignored as juniors were retained. Not only this, his juniors namely Smt. Suman and Shri Jeet Singh have been reemployed but petitioner has not been reemployed. There is nothing in evidence led by the respondents that petitioner was called upon to join after his retrenchment as it has no corresponding evidence on record which would establish that while engaging Smt. Suman or Jeet Singh petitioner was ever asked or given any opportunity to work with the respondent. As such, respondent has manifestly committed breach of provisions of Section 25-G as well as 25-H of the Act entitling petitioner for reinstatement, seniority and continuity in service.

13. In so far as the plea of having remained employed, it cannot be accepted as correct as petitioner is young person ageing about 43 years on the date of cross-examination before this court who could have earned from agriculture. Not only this, petitioner had also admitted on oath that he had been doing agricultural work when disengaged or his services were illegally terminated he had about two or three fields for agriculture purposes. As such respondents are held to have violated the provisions of Section 25-G as well as Section 25-H of the Act as for the applicability of Section 25-G, it is not necessary that claimant/petitioner should have worked for 240 days as has also been held by Hon'ble Apex Court in case title **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419**. The plea of abandonment has been raised by respondents is also not substantiated from reliable evidence more so when petitioner has revealed that no muster roll has been issued to petitioner but version of RW1 that petitioner used to come of his own for work and left the job but there is nothing in evidence to show that petitioner was ever notified about his illegal or unauthorized absence by respondent. Thus in absence of any evidence establishing that any proceeding was initiated against petitioner due to non attendance or that he had left the job rather fact of abandonment had to be proved by the respondents. Thus, respondents having failed to prove

abandonment as claimed respondents are held to have also violated the provisions of Sections 25-G and 25-H of the Act. Hence, petitioner is liable to be reengaged with continuity and seniority in service. In so far as plea of back wages is concerned, the same is denied in view of the fact that petitioner was himself earning from his agricultural pursuits the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324** has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood as has come in evidence in the case in hand, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled to back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Sections 25-G and 25-H of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by the respondent w.e.f. 31st March, 2001 was illegal and unjustified. As such, even petitioner is not entitled to back wages as stated above but he shall be entitled to all other consequential benefits including seniority and continuity in service Issues no. 1 and 2 are answered accordingly.

ISSUE NO. 3

14. Ld. Dy. D.A. has contended that claimant/petitioner is estopped to file the present claim petition but nothing has been shown which would estopp the claimant/petitioner for seeking relief for which he has come to the court. Thus, the plea of respondents merits rejection and issue in hand is answered in negative in favour of the petitioner and against the respondents.

RELIEF

15. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondents are hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

16. The reference is answered in the aforesaid terms.

17. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

18. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of May, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 245/2013
Date of Institution : 19.12.2013
Date of decision : 23.5.2015

Shri Kamal Singh s/o Shri Prithi Singh, r/o Village Dallewal, P.O. Binewal, Tehsil Garshankar, District Hoshiarpur, Punjab. *...Petitioner.*

Versus

The Employer/Managing Director, M/s. H.N. Steel Casting (P) Ltd. VPO Bathari, Tehsil Harili, District Una, H.P. *...Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. R.K. Singh Parmar, AR

For the Respondent : Respondent exparte

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Kamal Singh, S/O Shri Prithi Singh, R/O Village Dallewal, P.O. Binewal, Tehsil Garshankar, District Hoshiarpur, Punjab. w.e.f. 13-08-2012 (as alleged by worker) by the Employer/Managing Director, M/S H.N. Steel Casting (P) Ltd., VPO Bathari, Tehsil Haroli, District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to receipt of reference from appropriate govt. notices were issued to parties and that petitioner/claimant has appeared through his Authorized Representative but respondent company did not appear to contest the petitioner's claim.

3. Brief facts as set up in the claim petition reveal that petitioner was employed as security guard by respondent w.e.f. 24.12.2005 who continuously worked up-to 12.8.2012 with respondent. It is alleged that petitioner was deputed to work for 12 hours daily which was against the provisions of Factory Act, 1948 and Payment of Wages Act, 1936. It is further alleged that when petitioner had reported for duty on 13.8.2012, the respondent had refused him to join duty and orally told him that his services were no more required.

4. The petitioner had requested the respondent to re-engage him, but of no avail. He had thereupon raised demand notice and as a sequel thereto the matter has been referred to this Court. The petitioner thus avers that his termination is violative of the provisions of Section 25-F (a), 25-F (b) and 25-N of the Act, 1947 (hereinafter referred to as the Act). He thus seeks his re-engagement with all consequential benefits including full back wages.

5. The respondent had been duly served as per report dated 9.4.2015 of Labour Inspector, Una but the representative of the respondent company or any counsel on behalf of the respondent had not put in appearance. However none appeared on behalf of the respondent and vide order dated 29.4.2015 the respondent has been proceeded ex parte.

6. At the outset, it would be apt to mention here that Id. Authorized Representative for the petitioner vide separate statement dated 27.4.2015 did not press the plea of violation of the provisions of Section 25-G of the Act. Since petitioner does not press the plea of alleged violation of the provisions of Section 25-G the same plea merits rejection.

7. To prove his case, petitioner had stepped into the witness box as PW1 sworn in affidavit Ex. PW1/A under Order 18 Rule 4 CPC. While appearing as PW1 he has reiterated pleadings raised by him in his claim. The petitioner has deposed that he had continuously worked with the respondent from 24.12.2005 till 12.8.2012 but his services were disengaged orally without any notice and as such the disengagement of the petitioner is against the provisions of Sections 25-F and 25-N of the Act. The affidavit Ex. PW1/A of petitioner shows that petitioner was working as a security guard and he was drawing a salary of Rs.5200/- per month from the date of his initial appointment with the respondent. Un-rebutted testimony of the petitioner thus shows that petitioner had completed 240 days prior to his disengagement and non compliance of the provisions of Section 25-F of the Industrial Disputes Act entitles petitioner relief sought for as termination of service is illegal and void as respondent was duty bound to have issued notice qua retrenchment or one month's salary in lieu of notice to petitioner envisaged under Section 25-F of the Industrial Disputes Act. It is apparent from evidence on record that before dispensing with services of petitioner even no notice has been issued to the petitioner what to say for payment of compensation i.e. salary of one month in lieu thereof. The action of the respondent management is thus violative of the provisions of Section 25-F of the Industrial Disputes Act and that disengagement of the services of petitioner is thus illegal and void in the eyes of law and the same is liable to be set aside and petitioner is liable to be reengaged by respondent company. In so far as claim of back wages is concerned the petitioner has been terminated about two years before as per his claim who has discharged his initial onus of proving that he was not gainfully employed during the period of his forced idleness. Non appearance of respondent to contest the claim petition is manifestly suggestive of the facts that respondent had nothing to put forth any fact to controvert the allegation of claimant/petitioner including back wages. Keeping in view of age of claimant/petitioner on the date of disengagement and surrounding circumstances and facts highlighted above, it would be appropriate if petitioner is awarded 25% back wages from date of illegal termination till reengagement. Hence, petitioner is held entitled for reengagement in service with seniority and continuity in service along-with back wages of 25% from the date of his illegal termination and accordingly respondent is directed to reengage the petitioner forthwith.

8. The reference is decided in the aforesaid terms.

9. There shall be no orders as to costs.

10. The reference is answered accordingly. 11. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today the 23rd day of May, 2015.

By order,
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 24/2015

Smt. Geeta Devi w/o Shri Kanshi, r/o Village Shilah, P.O. Khazoor, Tehsil Joginder Nagar,
District Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.
.....*Respondent.*

26-02-2015 Present : Sh. N.L. Kaundal, A.R. for the petitioner.

None for the respondent.

Letter of authorisation has been filed by the authorised representative for the petitioner which be placed on record. Heard. Authorised representative for the petitioner has stated at bar that industrial dispute raised by present petitioner has already been decided by this Court in pursuance to reference made by the government. Thus, petitioner now does not want to proceed with this present reference and has prayed its dismissal. Accordingly, authorised representative for the petitioner in his statement on record has not pressed her claim besides prayed for its dismissal. The present reference received is, thus, dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. File, after due completion be consigned to the Record Room.

Announced:
26.02.2015

By order,
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 14/2013
Date of Institution : 18.02.2013
Date of decision : 29.05.2015

Shri Shesh Ram s/o Shri Khube Ram, r/o V.P.O. Khuhan, Sub Tehsil Balichowki, District
Mandi, H.P.. ...*Petitioner.*

Versus

The Divisional Forest Officer, Lahaul Forest Division Keylong, District Lahaul & Spiti,
H.P.Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Chetan Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Shesh Ram, S/O Shri Khube Ram, R/O V.P.O. Khuhan, Sub-Tehsil Balichowki, District Mandi, H.P. w.e.f. 23-10-2006 by The Divisional Forest Officer, Lahaul forest Division Keylong, District Lahaul & Spiti, H.P. without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner was engaged as daily waged forest worker in Kokser Beat, Range Office Keylong, Forest Division Lahaul in the year 2002 where he worked upto 22.10.2006. The grievance of petitioner remains that his services had been terminated verbally by respondent on 23.10.2006 without assigning any reason and at the same time without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’). It is alleged that neither any notice nor compensation in lieu of notice period had been paid to petitioner by respondent department before terminating the services in violation of the provisions of Section 25-F of the Act. It is claimed that work and conduct of petitioner had always remained satisfactory and that petitioner had completed 160 days in each calendar year while working in Forest Division Lahaul. It further remains the grievance of petitioner that several other persons who were junior to petitioner namely Yaga Chand, Nand Lal, Rai Chand, Dechen Wangmo and Jayanti Devi whose services were not terminated and were still working with the respondent/department and that petitioner’s services were unlawfully terminated and while doing so, respondent had violated the provisions of Section 25-G of the Act as the doctrine of ‘Last come First go’ was not followed by respondent. It is alleged that petitioner was performing his duties properly diligently upto satisfaction of his superiors but respondent department arbitrarily removed him from service despite sufficiency of work. It is contended that respondent department used to give fictional breaks to the petitioner and the said fictional break was liable to be declared illegal as the same tantamount to **unfair labour practice**. It further remains the case of petitioner that after his termination, he had remained unemployed as till the date of filing of claim petition, he was not gainfully employed and thus petitioner claims to be entitled to reinstatement and full salary from the date of his illegal termination till his reengagement. It is also alleged that as per policy of the State Govt., services of petitioner deserves to be regularized on the completion of eight years i.e. somewhere in the year 2010 as petitioner had rendered requisite period of service in tribal area of Lahaul in District Lahaul & Spiti. Accordingly petitioner prays for quashing impugned verbal termination order w.e.f. 23.10.2006 with further

prayer for his reinstatement into service w.e.f. same date as aforesaid with all consequential services benefits besides he has also prayed for his regularization as per the policy of the State Govt.

4. Respondent resisted the petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner was engaged on daily wages for seasonal work of forestation, development and conservation during year 2002 to 2006. It is alleged that as per mandays chart petitioner had served for 114 days in the year 2002, 112 days in the year 2003, 141 days in the year 2004, 149 days in the year 2005 and 142 days in 2006. It is claimed that after completion of seasonal work and starting of winter season petitioner had himself left the place being resident of District Mandi and thereafter he did not turn up for job. It is also contended that petitioner has not been retrenched from job by respondent and therefore violation of any of provision of industrial disputes did not arise. It is also contended that petitioner was not entitled for legal protection envisaged under Section 25-B and 25-F of the Act. It is further contended that some persons namely Smt. Dechen Wangmo and Smt. Jayanti Devi had been appointed on compassionate ground on account of untimely deaths of their husbands of Sh. Karma Dawa and Sh. Daya Nand. In so far as Yaga Chand and Rey Chand are concerned they were stated to have been engaged along-with petitioner in the year 2004. It is also denied that any fictional break was given to petitioner. Accordingly, denying all allegations qua violation of the provisions of the Act, the petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is denied that he had abandoned the job of his own. It is alleged that stand taken by respondent also gets falsified from its reply as on the one hand respondent claimed that in forest department daily waged workmen are engaged to perform seasonal work only subject to availability of work and funds and on the other hand, several employees were given 365 to 366 days in calendar year of daily waged workers namely Yaga Chand and Rey Chand thus stand of respondent being self contradictory could not be accepted instead plea set up by petitioner qua his illegal termination deserves to be accepted.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC and PW2 Shri Tek Singh and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri H.L. Rana, Divisional Forest Officer, Lahaul Forest Division, Keylong, H.P. who proved himself as RW1, tendered Ex. RW1/B is the copy of mandays chart of petitioner, Ex. RW1/C letter dated 27.3.2012, Ex. RW1/D copy of letter dated 26.3.2012, Exts. RW1/E and F are the mandays chart of Yagia Chand and Rey Chand and closed evidence.

7. I have heard the ld. counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on by my ld. Predecessor on 22.1.2014 for determination:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 23.10.2006 is/was illegal and unjustified as alleged? ...OPP.
2. Whether the claim petition is not maintainable in the present form? ...OPR.
3. Whether the claim petition is hit by the vice of delay and laches as alleged. If so, its effect? ...OPR.
4. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

10. Admittedly, petitioner had been engaged as daily waged forest worker in the month of June, 2002 without any written appointment letter by respondent and that petitioner worked in the Kokesar Beat, Range Office Keylong Forest Division Lahaul. It also remains the case of petitioner that respondent department had verbally terminated his services vide order dated 23.10.2006 whereas the case of respondent, on the other hand remains that petitioner had abandoned the job of his own who did not turn as can be noticed in manner from which he worked as reflected in mandays chart Ex. RW1/B.

11. To appreciate to controversy in issue, it would be pertinent to refer to mandays chart Ex. RA which showed that petitioner when initially engaged in the month of June, 2002 had worked for 30 days and subsequent in the month of July, 2002 he worked 31 days, in August, 2002 he worked for 31 days and September, 2002 he worked for 22 days thereafter from October, 2002 till May, 2003 he did not work. As such, in the year 2003 petitioner had worked for 112 days and in the year 2003 in the months from June, 2003 to September, 2003 he worked for 30, 31, 31, and 12 days thereafter from October, 2003 to March, 2004 he again did not work and in the months of April, June, July, August and October, 2004 petitioner worked for 26, 30, 31, 30 and 24 days aggregating to 141 days in the year 2004. Similarly, in the year 2005 in the months of April, June, July, August and September, 2005 he worked for 30, 30, 28, 31, 30 aggregating to 149 days in the year 2005 and from October, 2005 to May, 2006 he did not work. Similarly, in the year 2006 in the months from June to October petitioner had worked for 30, 30, 30, 30 and 22 aggregating 142 days in preceding one calendar year petitioner has certainly not worked for 240 days or say 160 days as were required to be established who claimed to have worked in Lahaul area or District Lahaul & Spiti. Reliance is placed on notification No.PER(AP)-C-B (2)-1/2011 dated 20.7.2011 issued by Principal Secretary (Personnel) to govt. of H.P. Department of Personnel (AP) which revealed that as per the policy of the government per Annexure A, daily waged/contingent paid workers who had completed eight years of continuous service will be eligible for consideration for regularization against available vacancy in forest department. It was specifically mentioned that eligibility for regularization of such workers in respect of tribal areas shall be on the basis of number of minimum requisite days i.e. in case **District Lahaul and Spiti in area of Lahaul**, the daily waged worker for regularization required 160 days only and 240 days in any calendar year were required for **other areas**. In the case in hand, petitioner has made futile attempt by claiming that fictional breaks had been given as petitioner was not given muster roll for 30 days every month he worked but there is no corresponding evidence which would show if fictional breaks were factually given to petitioner instead he was given muster roll according to work and funds available but on the other hand the period of 160 days is sufficient for him to claim protection having worked in tribal area of Lahaul envisaged under Section 25-F of the Act who shall be deemed to be in continuous service if he succeeded in establishing to have worked for 160 days in a year.

12. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A under Order 18 Rule 4 CP stipulating therein the manner he was engaged as daily waged forest worker and till when he continued to work he has in unequivocal terms stated that he had neither been given any notice envisaged under Section 25-F of the Act nor any compensation in lieu thereof notice has been paid to him and therefore the termination of the services of petitioner by respondent was manifestly illegal as the respondent had failed to adhere to the mandatory provisions of the Act. It is further alleged in the affidavit that work and conduct of petitioner remained satisfactory for the entire 160 days in a year with the respondent department and being employed remained posted in the hard/tribal area of Lahaul, District Lahaul and Spiti as the period of 160 days as per the notification of govt. as stated above for regularization per its policy. The version of petitioner has been corroborated by PW2 Shri Tek Singh in the same manner as petitioner has stipulated in his affidavit but in cross-examination this witness showed that he was from village of petitioner but nothing in cross-examination could be elicited which would establish that he deposed falsely in favour of petitioner. Significantly, PW2 too worked with forest department whose services had been regularized. As such, there exists no discrepancy or any inconsistency in testimony of PW2 and the same can be relied.

13. In so far as the plea of abandonment of work by petitioner as alleged by respondent is concerned, there is no iota of evidence on record which would show that the respondent had made any endeavour to call petitioner on job when he absented. It is nowhere in the respondent's evidence that any registered letter or notice was ever sent on the address available or that any charge sheet was raised. It has been rightly contended by ld. counsel for petitioner that abandonment is required to be proved like any other fact which has not been established by respondent in this case. Ld. counsel for petitioner has relied upon judgment of Hon'ble High Court of Punjab and Haryana reported in **2014 LLR 571** titled as **Ved Parkash vs. Presiding Officer, Industrial Tribunal cum-Labour Court, Rohtak and Anr.**, the relevant para of the judgment is given below:—

“Abandonment-employee was a part-time Electrician. He had been taken a contract for a Canteen in the premises of the Bank/employer. He could not attend duty regularly. He was neither given notice nor retrenchment compensation nor had been indicted in any departmental enquiry. He had completed continuous service for more than 240 days. His services were terminated. He raised an industrial dispute. Industrial Tribunal held the termination to be justified. In writ petition, the High Court observed that it is not proved on record by cogent evidence that the employee had abandoned the employment of his own. Hence, the termination as effected, is illegal”

14. In the above mentioned judgment services of employee was held to be illegally terminated in view of the fact that no notice was given. At the same time while terminating the services of petitioner, notice as required under Section 25-F of the Act or compensation in lieu thereof notice was not given. By merely stating that petitioner had abandoned job, the plea of respondent could not be accepted as is in his affidavit, respondent as RW-3 has maintained that due to abandonment of the job of petitioner he was not entitled for any legal protection but as noted above there being no reliable evidence of abandonment or that any proceedings had been initiated by respondent to hold that petitioner had abandoned the job instead crossexamination of RW1 shows that as per the rules framed by government petitioner was claiming benefit for scheme of regularization of employees who had rendered continuous service of eight years. If we look at evidence of petitioner on the mandays chart it would not be erroneous to conclude that petitioner had worked for 114 days in the year 2002, 112 days in 2003, 141 days in the year 2004, 149 days in the year 2005 and 142 days in 2006 prior to his termination the petitioner had worked for only 142 days and thus petitioner would not be entitled to protection envisaged under Section 25-F of the Act. In such like situation it was not incumbent upon respondent to have followed procedure envisaged under Section 25-F of the Act.

15. Another important aspect highlighted by petitioner claiming his retrenchment to be illegal and unjustified is that petitioner has alleged that respondent while terminating his services had not followed the provisions of Section 25-G of the Act which requires adopting of principle of 'Last come First go'. Reliance has been placed on the judgment of our own Hon'ble High Court reported in **2013 LLR 1206** titled as **State of H.P. and another vs. Hardyal Singh** while dealing with Section 25-G of the Act has held that in order to claim benefit envisaged under Section 25-G of the Act the workman is not liable to prove continuous service of 240 days. Since the plea of management that workman had abandoned the job has not been established and that no objections had been raised about validity of reference for adjudication, workman who had been retrenched but had not worked for 240 days in preceding year was entitled for the protection under Section 25-G. In the case before this court, the plea of petitioner remains that several persons junior to him were still continuing with respondent and that he having joined earlier to them has not been retained by the department while retrenching him.

16. It is evident from mandays chart Ex. RW1/B relating to Shesh Ram (petitioner) that he was appointed/engaged in June, 2002 whereas Ex. RW1/F relating to Rey Chand showed that he got employed in the year 2005. Ex. RW1/E is the mandays chart of Yagia Chand, who is shown to have worked with respondent department till 2012 and was appointed in 2004. As such, from the mandays chart of Yagia Chand it could not be concluded with certainty that he had joined after May, 2004 when petitioner had joined as the Yagia Chand had worked for more than seven months in that year. Similarly, Rey Chand is shown to have joined in the year 2005 who had worked for 365 days and was also continuing as on date. As such, the petitioner had rightly contended that principle of 'Last come First go' was not followed. From the evidence of petitioner as well as statement of RW1, it can be safely inferred that Rey Chand was junior to petitioner and was working with the respondent department when petitioner was retrenched. Significantly, RW1 has also admitted that petitioner was not called to join duties after his termination. It has also come in the evidence of respondent that two persons have been engaged/appointed on the compassionate grounds which would not eclipse claim of petitioner as certainly there is evidence on record to show that persons junior to petitioner were still working with the department.

17. The falsity of respondent's case further gets surfaced from its own plea as the respondent had maintained that petitioner was engaged for seasonal forestry work whereas at the same time respondent had engaged Yagia Chand for more than 200 days in each year from 2004 to 2012 and in some of the years he had worked for 365 days. Similarly, Rey Chand too vide its mandays chart on record is shown to have remained employed from 2005 to 2012 exceeding 300 days in each year he worked. That being so, work of respondent/department could not be stated to be seasonal work in any manner. As such, plea of respondent that petitioner was engaged only for seasonal work and abandoned the job of his own respondent could not be accepted as true plea. Accordingly, respondent is held to have violated the provisions of Section 25-G of the Act as has been held in judgment of our own Hon'ble High Court reported in **2013 (138) FLR 1051** titled as **Paras Ram vs. Himachal Pradesh State Electricity Board Ltd.**, in which the Hon'ble High Court held that the junior workmen had been retained by the respondent retrenching petitioner/workman which is the violation of the provisions of Section 25-G of the Act.

18. Ld. Dy. D.A. for the State has also contended that petitioner is not entitled for any back wages as he was gainfully employed after being disengaged by respondent. In his claim petition as maintained that he has remained unemployed and not gainfully employed ever since his termination w.e.f. 23.10.2006 but in the witness box he has specifically admitted that he was gainfully employed and was earning from his agricultural pursuits. Since the plea of having been not gainfully employed gets belied from his inconsistent fact deposed in cross-examination, it would be unsafe to hold that petitioner was not gainfully employed. In the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors.**

2013 10 SCC 324, the Hon'ble Apex Court has held that even earning from agricultural income would be treated as gainful employment of workman and thus petitioner having remained gainfully employed, would not be entitled to back wages more so petitioner himself admits that he was earning his livelihood from agricultural activities. The petitioner thus shall be entitled for continuity in service and seniority. Issue in hand is accordingly answered in affirmative.

ISSUE NO.2

19. Ld. Dy. D.A. has argued that claim petition since not maintainable. Perusal of the reply on record shows that neither any legal or fundamental rights of petitioner had ever been infringed. As has come in the evidence on record that the services of petitioner had been illegally terminated vide verbal order, I see no force in the arguments of Ld. Dy. D.A. as vague plea of denial of infringement of fundamental rights has been raised but the petitioner redress his grievance by filing claim petition as stated above. Issue in hand is answered in negative and in favour of petitioner and against the respondent.

ISSUE NO.3

20. Ld. Dy. D.A. for the State has also contended that claim petition is bad on account of delay and laches. In support his contention he has referred the facts of the case that petitioner is shown to have left the job in 2006 although the plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. On the other hand, ld. Authorized Representative/counsel for the claimant/petitioner had contended that delay does not disentitle petitioner from seeking relief he has relied upon in **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In **CWP No. 95 of 2000** titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any

prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

22. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

23. The reference is answered accordingly.

24. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion be consigned to the record room. Announced in the open Court today the 29th day of May, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. 101 / 2014

Sh. Rakesh Kumar s/o Shri Pramod Chand, r/o V.P.O. Pandoga, District Una, H.P.

..Petitioner.

Versus

The Employer/Factory Manager, M/S Reinforced Soil Technologies Pvt. Limited, Plant Unit-I, V.P.O. Pandoga, Tehsil & District Una, H.P. (Area Office), Reinforced Soil Technologies, 1407, DLF Galleria, DLF City Phase-4, Gurgaon, Haryana (Corporate Office). *..Respondent.*

30-05-2015 Present: None for the petitioner.

Sh. Pradeep Dogra, adv. vice of Sh. Rajeshwar Sapahya, adv. csl. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours at 2.30 PM.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

30-05-2015 Present: None for the petitioner.

Sh. Pradeep Dogra, adv. vice of Sh. Rajeshwar Sapahya, adv. csl. for the respondent.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.38 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. : 323/2014

Sh. Ramesh Negi s/o Sh. Kumar Singh Negi, r/o Village Dabur, P.O. Shar, Tehsil Kot
Duwar, Distt. Porigarwal, Uttranchal. . .Petitioner.

Versus

The Executive Director , M/S Surya Resorts Pvt. Ltd. Mcleodganj, Tehsil Dharamshala,
Distt. Kangra, H.P. . .Respondent.

30-05-2015 Present: Sh. N.L. Kaundal, A.R. for the petitioner.

Sh. Paramjeet Bamba, Executive Director for the respondent's company in person.

Photocopies of the documents filed by respondent.

2. Heard. Statement of Authorised Representative for the petitioner for not pressing of reference is recorded which revealed that petitioner has received Rs. 5770/- in full and final settlement of claim of petitioner. Statement recorded and placed on file.

3. In view of statement made by Authorised Representative for the petitioner, the reference/claim of the petitioner is disposed of as withdrawn.

4. Ordered accordingly. The parties to bear their own costs.

5. The reference is answered in the aforesaid terms.

6. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.

7. The file, after completion be consigned to the records.

Announced:

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 201/2013
Date of Institution : 15.11.2013
Date of decision : 30.05.2015

Shri Kuldeep Singh s/o Shri Govind, r/o Village Sanahli, P.O. Tullah, Tehsil Joginder Nagar, District Mandi, H.P. . .Petitioner.

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. . .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Kuldeep Singh, S/O Shri Govind, R/O Village Sanahli, P.O. Tullah, Tehsil Joginder Nagar, District Mandi, H.P. during 2000 to 2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 6.4.2000 in its National Highway Division, Joginder Nagar and later petitioner worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from in his initial engagement till 31.8.2007. It is alleged that petitioner was issued muster rolls for 15 days in a month, though the work was

available for the entire month but juniors of petitioner namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for short). The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

3. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad for non- joinder of necessary parties, claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from September, 1999 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25- F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Accordingly, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

4. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

5. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed the evidence. On the other hand repudiating the evidence led by petitioner, respondent had examined Shri B.S. Barwal, the then Executive Engineer, HPPWD (B&R) Division Joginder Nagar as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed the evidence.

6. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

7. From the contentions raised, following issues were framed by my Id. predecessor on 22.2.2014 for determination:

1. Whether the termination of the services/giving fictional breaks in service to the petitioner by the respondent from time to time from the year 2000 to 2007 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
4. Relief.

8. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

9. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. 6.4.2000 is not in dispute. It is admitted case of petitioner that he had worked since April, 2000 but he had been deliberately given fictional breaks by respondent so that he did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from his duties is devoid of merit as there is nothing in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties. Rather, it is projected to be case as if petitioner came of his own and worked left the work of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Geet Devi, Dalip Singh, Goutam Singh and Anil Kumar have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

10. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1999 petitioner had worked for 80 days, 217 days in the year 2000, 147 days in the year 2001, 211 days in the year 2002, 186 days in the year 2003, 170 days in the year 2004, 170 days in the year 2005, 156 days in the year 2006, 232 days in the year 2007, 364 days in the year 2008, 355 days in the year 2009, 350 days in the year 2010, 354 days in the year 2011, 291 days in the year 2012 and 270 days in the year 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2002, 2003 and 2004 except at serial no. 7 who had joined earlier to petitioner as workman at serial no.8 joined in 8/1999 whereas petitioner had joined in September, 1999. Since respondent had not disputed to have engaged petitioner in September, 1999, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and that fictional breaks in no manner would affect or eclipse him legitimate of regularization in service.

11. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1999 to

2007 by giving fictional break whereas the persons junior to her have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided more than 240 days of work after September, 2007 which means the dispute is only for the years 1999 to 2007 as stated in the affidavit. RW1 Shri B.S. Barwal has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1999 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but he could not prove so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty any notice was issued for unauthorized absence and the version of RW1 that petitioner came and go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 get substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of having fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1999 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the peculiar circumstances of the case. Issue in question is decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 2

12. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

13. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim

on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

14. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

15. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed and reference is accordingly answered in favour of petitioner who shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

16. The reference is answered in the aforesaid terms.

17. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

18. File after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of May, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 274/2014
Date of Institution : 09.09.2014
Date of decision : 30.05.2015

Smt. Lata Devi w/o Shri Kali Dass, r/o Village Rakkar (Galu), P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. . . . *Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. . . . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Lata Devi, W/O Shri Shyam Singh, R/O Village Rakkar (Galu), P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. during 02-2001 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. After the receipt of the abovestated reference, a corrigendum dated 25th February, 2015 was received from the appropriate government which reads as under:

“In partial modification of this Department’s notification of even number dated 20-08-2014, “Smt. Lata Devi W/O Shri Shyam Singh” be substituted by “Smt. Lata Devi W/O Shri Kali Dass” which was inadvertently recorded in the said notification”.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. February, 2001 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in her name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner’s for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, her services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 2001 to 30.09.2007. Not only this, the persons who were working

with her (petitioner) or joined the service after her were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to her contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2011 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

3. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from February, 2001 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with her verbal requests from time to time, she was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per her convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

4. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

5. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri B.S. Barwal the then Executive Engineer, HPPWD (B&R) Division Joginder Nagar as RW1 tendered Ex. RW1/A notification dated 9th

December, 2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year wise working days of daily wage Beldar, Ex. PX copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks and closed the evidence.

6. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

7. From the contentions raised, following issues were framed on 16.12.2014 for determination:

1. Whether time to time termination of the services of the petitioner/giving breaks in service to the petitioner by the respondent during March, 1999 to 31.8.2007 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is answered in negative, to what amount of back wages, seniority, past service benefits and compensation, the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? . . .*OPR.*
5. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? . . .*OPR.*

6. Relief.

8. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No. 5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

9. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

10. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent in the year 2001 is not in dispute. It is the admitted case of petitioner that petitioner had worked since 2001 but she had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own used to not come on her duty besides she willfully absented several times from her duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from her duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties. Rather, it is projected to be case as if petitioner came of her own for work and left the work of her own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to her and that several persons junior to her namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

11. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 2001 petitioner had worked for 154 days, 149 days in the year 2002, 172 days in the year 2003, 161 days in the year 2004, 148 days in the year 2005, 153.5 days in the year 2006, 166 days in the year 2007, 339 days in the year 2008, 319 days in the year 2009, 365 days in the year 2010, 348 days in the year 2011, 345 days in the year 2012, 332 days in the year 2013, and 198 days in the year 2014. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years she had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PX direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 2001 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from her termination was definitely a fictional break as in remaining years, she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2002, 2003 and 2004 except at serial nos. 1 to 3 who had joined earlier to petitioner as workman at serial no.4 joined in the year 1999 whereas petitioner had joined in the year 2001. Since respondent had not disputed to have engaged petitioner in February, 2001 she ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement and thus fictional breaks in no manner would affect or eclipse her legitimate right of regularization in service.

12. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 2001 to 2007 by giving fictional break whereas the persons junior to her have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, she has admitted that she has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 2001 to 2007 as stated in the affidavit. RW1 Shri B.S. Barwal has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the

petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2001 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 2001 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from her duty any notice was issued for unauthorized absence and the version of RW1 that she came and go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 2001 to 2007 get substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

13. Although, petitioner being in employment at the time of passing of having fictional breaks as stated above is duly established yet she cannot be deprived of her legitimate right to seek seniority as well as continuity in service from her date of joining along-with other persons working with her besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 2001 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** particularly when she has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

14. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of her own and did not join her duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO.5

15. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that she was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.4

16. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High

Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of her initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim of petition is hereby allowed and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of May, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 275/2014
Date of Institution : 09.09.2014
Date of decision : 30.05.2015

Smt. Sumna Devi w/o Shri Jagdish Chand, r/o Village Galu, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. . .*Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. . .*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Sumna Devi, W/O Shri Jagdish Chand, R/O Village Galu, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. during 05-1999 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis in the year 1999 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in her name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, her services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner

artificial breaks from the year 1999 to 30.09.2007. Not only this, the persons who were working with her (petitioner) or joined the service after her were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to her contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

3. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from January, 1999 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with her verbal requests from time to time, she was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per her convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

4. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

5. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri B.S. Barwal the then Executive Engineer,

HPPWD (B&R) Division Joginder Nagar as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year wise working days of daily wage Beldar, Ex. PX copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks and closed the evidence.

6. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

7. From the contentions raised, following issues were framed on 16.12.2014 for determination:

1. Whether time to time termination of the services of the petitioner/giving breaks in service to the petitioner by the respondent during May, 1999 to 31.8.2007 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is answered in negative, to what amount of back wages, seniority, past service benefits and compensation, the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? . . .*OPR.*
5. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? . . .*OPR.*
6. Relief.

8. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No. 5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

9. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

10. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent in the year 1999 is not in dispute. It is the admitted case of petitioner that petitioner had worked since 1999 but she had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own used to not come on her duty besides she willfully absented several times from her duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from her duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties. Rather, it is projected to be case as if petitioner came of her own for work and left the work of her own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to her and that several persons junior to her namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

11. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1999 petitioner had worked for 171 days, 174 days in the year 2000, 172 days in the year 2001, 169 days in the year 2002, 173 days in the year 2003, 169 days in the year 2004, 167 days in the year 2005, 158 days in the year 2006, 226 days in the year 2007, 358 days in the year 2008, 352 days in the year 2009, 313 days in the year 2010, 357 days in the year 2011, 348 days in the year 2012, 359 days in the year 2013 and 205 days in the year 2014. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years she had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PX direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but her instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 1999 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from her termination was definitely a fictional break as in remaining years she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2002, 2003 and 2004 except at serial nos. 1 to 3 who had joined earlier to petitioner as workman at serial no.4 joined in the year 1999 whereas petitioner had joined in December, 1998. Since respondent had not disputed to have engaged petitioner in December, 1998, she ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement and thus fictional breaks in no manner would affect or eclipse her legitimate right of regularization in service.

12. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 1999 to 2007 by giving fictional break whereas the persons junior to her have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, she has admitted that she has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 1999 to 2007 as stated in the affidavit. RW1 Shri B.S. Barwal has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the

petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1999 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from her duty any notice was issued for unauthorized absence and the version of RW1 that she came and go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 get substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

13. Although, petitioner being in employment at the time of passing of having fictional breaks as stated above is duly established yet she cannot be deprived of her legitimate right to seek seniority as well as continuity in service from her date of joining along-with other persons working with her besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 1999 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** particularly when she has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

14. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of her own and did not join her duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO.5

15. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that she was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.4

16. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High

Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of her initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim of petition is hereby allowed and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of May, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 276/2014
Date of Institution : 09.09.2014
Date of decision : 30.05.2015

Shri Prem Singh s/o Shri Banku Ram, r/o Village Banar, P.O. Dul, Tehsil Joginder Nagar,
District Mandi, H.P. . . . *Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P.
.. . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Prem Singh, S/O Shri Banku Ram, R/O Village Banar, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. during 12-1998 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. December, 1998 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in his name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner

artificial breaks from the year 1999 to 30.09.2007. Not only this, the persons who were working with him (petitioner) or joined the service after him were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to him contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

3. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from December, 1998 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

4. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

5. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri B.S. Barwal the then Executive Engineer,

HPPWD (B&R) Division Joginder Nagar as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year wise working days of daily wage Beldar, Ex. PX copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks and closed the evidence.

6. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

7. From the contentions raised, following issues were framed on 16.12.2014 for determination:

1. Whether time to time termination of the services of the petitioner/giving breaks in service to the petitioner by the respondent during December, 1998 to 31.8.2007 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is answered in negative, to what amount of back wages, seniority, past service benefits and compensation, the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? . . .*OPR.*
5. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? . . .*OPR.*
6. Relief.

8. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No. 5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

9. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

10. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. December, 1998 is not in dispute. It is the admitted case of petitioner that petitioner had worked since December, 1998 but he had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own used to not come on his duty besides he willfully absented several times from his duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from his duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties. Rather, it is projected to be case as if petitioner came of his own for work and left the work of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

11. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1998 petitioner had worked for 6 days, 194 days in the year 1999, 178 days in the year 2000, 177 days in the year 2001, 155 days in the year 2002, 179 days in the year 2003, 164 days in the year 2004, 167 days in the year 2005, 167 days in the year 2006, 207 days in the year 2007, 362 days in the year 2008, 361 days in the year 2009, 363 days in the year 2010, 361 days in the year 2011, 354 days in the year 2012, 365 days in the year 2013 and 210 days in the year 2014. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years he had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PX direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but his instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 1998 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2002, 2003 and 2004 except at serial nos. 1 to 3 who had joined earlier to petitioner as workman at serial no.4 joined in the year 1999 whereas petitioner had joined in December, 1998. Since respondent had not disputed to have engaged petitioner in December, 1998, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and thus fictional breaks in no manner would affect or eclipse him legitimate right of regularization in service.

12. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1998 to 2007 by giving fictional break whereas the persons junior to her have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 1998 to 2007 as stated in the affidavit. RW1 Shri B.S. Barwal has admitted in cross-examination that seniority list Ex. RW1/D of

all the labourers shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1998 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 1998 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty any notice was issued for unauthorized absence and the version of RW1 that he came and go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 1998 to 2007 get substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

13. Although, petitioner being in employment at the time of passing of having fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 1998 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** particularly when he has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

14. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO.5

15. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that he was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.4

16. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered

by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of May, 2015.

By order,
K .K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 277/2014
Date of Institution : 09.09.2014
Date of decision : 30.05.2015

Shri Nag Chand s/o Shri Halku Ram, r/o Village Maherna, P.O. Dul, Tehsil Joginder Nagar,
District Mandi, H.P. *...Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P.
....Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Nag Chand, S/O Shri Halku Ram, R/O Village Maherna, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. during 12-1998 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. December, 1998 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in his name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full

month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 1999 to 30.09.2007. Not only this, the persons who were working with him (petitioner) or joined the service after him were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to him contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

3. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from December, 1998 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

4. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

5. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri B.S. Barwal the then Executive Engineer, HPPWD (B&R) Division Joginder Nagar as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar, Ex. PX copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks and closed the evidence.

6. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

7. From the contentions raised, following issues were framed on 16.12.2014 for determination:

1. Whether time to time termination of the services of the petitioner/giving breaks in service to the petitioner by the respondent during December, 1998 to 31.8.2007 is/was illegal and unjustified as alleged? ...*OPP.*
2. If issue No.1 is answered in negative, to what amount of back wages, seniority, past service benefits and compensation, the petitioner is entitled to? ...*OPP.*
3. Whether the claim petition is not maintainable in the present form? ...*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? ...*OPR.*
5. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? ...*OPR.*
6. Relief.

8. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No. 5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

9. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

10. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. December, 1998 is not in dispute. It is the admitted case of petitioner that petitioner had worked since December, 1998 but he had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own used to not come on his duty besides he willfully absented several times from his duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from his duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties. Rather, it is projected to be case as if petitioner came of his own for work and left the work of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

11. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1998 petitioner had worked for 7 days, 194 days in the year 1999, 170 days in the year 2000, 175 days in the year 2001, 160 days in the year 2002, 151 days in the year 2004, 167 days in the year 2005, 164 days in the year 2006, 191 days in the year 2007, 359 days in the year 2008, 363 days in the year 2009, 365 days in the year 2010, 363 days in the year 2011, 348 days in the year 2012, 365 days in the year 2013 and 210 days in the year 2014. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years he had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PX direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but his instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 1998 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2002, 2003 and 2004 except at serial nos. 1 to 3 who had joined earlier to petitioner as workman at serial no.4 joined in the year 1999 whereas petitioner had joined in December, 1998. Since respondent had not disputed to have engaged petitioner in December, 1998, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined alongwith him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and thus fictional breaks in no manner would affect or eclipse him legitimate right of regularization in service.

12. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1998 to 2007 by giving fictional break whereas the persons junior to her have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 1998 to 2007 as stated in the affidavit. RW1 Shri B.S. Barwal has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the

petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1999 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 1998 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty any notice was issued for unauthorized absence and the version of RW1 that he came and go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 1998 to 2007 get substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

13. Although, petitioner being in employment at the time of passing of having fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 1998 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** particularly when he has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

14. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO.5

15. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respndent only PW1 has admitted in crossexamination that he was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.4

16. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High

Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of May, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref .No. : 278/2014
Date of Institution : 09.09.2014
Date of decision : 30.05.2015

Smt. Santoshi Devi w/o Shri Mehar Singh, r/o Village Khohli (Galu), P.O. Dul, Tehsil
Joginder Nagar, District Mandi, H.P. *...Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P.
....Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Santoshi Devi, w/o Shri Mehar Singh, R/O Village Khohli (Galu), P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. during 11-1999 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. November, 1999 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in her name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the

respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, her services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 1999 to 30.09.2007. Not only this, the persons who were working with her (petitioner) or joined the service after her were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to her contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

3. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from February, 1999 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with her verbal requests from time to time, she was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per her convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

4. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

5. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri B.S. Barwal the then Executive Engineer, HPPWD (B&R) Division Joginder Nagar as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar, Ex. PX copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks and closed the evidence.

6. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

7. From the contentions raised, following issues were framed on 16.12.2014 for determination:

1. Whether time to time termination of the services of the petitioner/giving breaks in service to the petitioner by the respondent during November, 1999 to 31.8.2007 is/was illegal and unjustified as alleged? ... *OPP.*
2. If issue No.1 is answered in negative, to what amount of back wages, seniority, past service benefits and compensation, the petitioner is entitled to? ...*OPP.*
3. Whether the claim petition is not maintainable in the present form? ...*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? ...*OPR.*
5. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? ...*OPR.*
6. Relief.

8. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No. 5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

9. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

10. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. November, 1999 is not in dispute. It is the admitted case of petitioner that petitioner had worked since January, 2001 but she had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own used to not come on her duty besides she willfully absented several times from her duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from her duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties. Rather, it is projected to be case as if petitioner came of her own for work and left the work of her own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to her and that several persons junior to her namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

11. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1999 petitioner had worked for 34 days, 166 days in the year 2001, 159 days in the year 2002, 173 days in the year 2003, 166 days in the year 2004, 157 days in the year 2005, 133 days in the year 2006, 198 days in the year 2007, 355 days in the year 2008, 359 days in the year 2009, 333 days in the year 2010, 358 days in the year 2011, 325 days in the year 2012 363 days in the year 2013 and 208 days in the year 2014. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years she had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PX direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 2001 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from her termination was definitely a fictional break as in remaining years she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2002 and 2003 except at serial nos. 1 to 5 & 10 who had joined earlier to petitioner as workman at serial nos. 6 & 7 joined in the year 2001 whereas petitioner had joined in February, 2001. Since respondent had not disputed to have engaged petitioner in February, 2001, she ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement and thus fictional breaks in no manner would affect or eclipse her legitimate right of regularization in service.

12. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 2001 to 2007 by giving fictional break whereas the persons junior to her have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, she has admitted that she has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 2001 to 2007 as stated in the affidavit. RW1 Shri B.S. Barwal has admitted in cross-examination that seniority list Ex. RW1/D of

all the labourers shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2001 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 2001 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from her duty any notice was issued for unauthorized absence and the version of RW1 that she came and go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 get substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

13. Although, petitioner being in employment at the time of passing of having fictional breaks as stated above is duly established yet she cannot be deprived of her legitimate right to seek seniority as well as continuity in service from her date of joining along-with other persons working with her besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 2001 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** particularly when she has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

14. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of her own and did not join her duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO.5

15. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that she was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 4

16. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered

by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of her initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim of petition is hereby allowed and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of May, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 279/2014
Date of Institution : 09.09.2014
Date of decision : 30.05.2015

Shri Swaru Ram s/o Shri Gorkhu Ram, r/o Village Patt, P.O. Dul, Tehsil Joginder Nagar,
District Mandi, H.P.Petitioner.

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P.
....Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Swaru Ram, S/O Shri Gorkhu Ram, R/O Village Patt, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. during 04-1999 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. April, 1999 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in his name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the

respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 1999 to 30.09.2007. Not only this, the persons who were working with him (petitioner) or joined the service after him were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to him contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

3. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from January, 1999 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

4. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

5. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri B.S. Barwal the then Executive Engineer, HPPWD (B&R) Division Joginder Nagar as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar, Ex. PX copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks and closed the evidence.

6. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

7. From the contentions raised, following issues were framed on 16.12.2014 for determination:

1. Whether time to time termination of the services of the petitioner/giving breaks in service to the petitioner by the respondent during April, 1999 to 31.8.2007 is/was illegal and unjustified as alleged? ...*OPP.*
2. If issue No.1 is answered in negative, to what amount of back wages, seniority, past service benefits and compensation, the petitioner is entitled to? ...*OPP.*
3. Whether the claim petition is not maintainable in the present form? ...*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? ...*OPR.*
5. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? ...*OPR.*
6. Relief.

8. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No. 5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

9. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

10. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. April, 1999 is not in dispute. It is the admitted case of petitioner that petitioner had worked since April, 1999 but he had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own used to not come on his duty besides he willfully absented several times from his duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from his duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties. Rather, it is projected to be case as if petitioner came of his own for work and left the work of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

11. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1999 petitioner had worked for 186 days, 180 days in the year 2000, 177 days in the year 2001, 165 days in the year 2002, 151 days in the year 2003, 165.5 days in the year 2004, 164 days in the year 2005, 165 days in the year 2006, 224 days in the year 2007, 362 days in the year 2008, 357 days in the year 2009, 333 days in the year 2010, 363 days in the year 2011, 346 days in the year 2012, 354 days in the year 2013 and 210 days in the year 2014. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years he had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PX direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but his instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 1999 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2002, 2003 and 2004 except at serial nos. 1 to 3 who had joined earlier to petitioner as workman at serial no.4 joined in the year 1999 whereas petitioner had joined in December, 1998. Since respondent had not disputed to have engaged petitioner in December, 1998, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined alongwith him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and thus fictional breaks in no manner would affect or eclipse him legitimate right of regularization in service.

12. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1999 to 2007 by giving fictional break whereas the persons junior to her have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 1999 to 2007 as stated in the affidavit. RW1 Shri B.S. Barwal has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the

petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1999 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty any notice was issued for unauthorized absence and the version of RW1 that he came and go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 get substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

13. Although, petitioner being in employment at the time of passing of having fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 1999 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** particularly when he has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

14. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO.5

15. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that he was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.4

16. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High

Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

19. The reference is answered in the aforesaid terms. 20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of May, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 280/2014
Date of Institution : 09.09.2014
Date of decision : 30.05.2015

Shri Joginder s/o Shri Saran, r/o Village Patt, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. *...Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. *....Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Joginder, S/O Shri Saran, R/O Village Patt, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. during 03-1999 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis in the year 1999 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in his name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were

continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 1999 to 30.09.2007. Not only this, the persons who were working with him (petitioner) or joined the service after him were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to him contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

3. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from March, 1999 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

4. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

5. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the

evidence led by petitioner, respondent had examined Shri B.S. Barwal the then Executive Engineer, HPPWD (B&R) Division Joginder Nagar as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar, Ex. PX copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks and closed the evidence.

6. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

7. From the contentions raised, following issues were framed on 16.12.2014 for determination:

1. Whether time to time termination of the services of the petitioner/giving breaks in service to the petitioner by the respondent during March, 1999 to 31.8.2007 is/was illegal and unjustified as alleged? ...*OPP*.
2. If issue No.1 is answered in negative, to what amount of back wages, seniority, past service benefits and compensation, the petitioner is entitled to? ...*OPP*.
3. Whether the claim petition is not maintainable in the present form? ...*OPR*.
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? ...*OPR*.
5. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? ...*OPR*.
6. Relief.

8. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No. 5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

9. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

10. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. March, 1999 is not in dispute. It is the admitted case of petitioner that petitioner had worked since March, 1999 but he had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own used to not come on his duty besides he willfully absented several times from his duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from his duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties. Rather, it is projected to be case as if petitioner came of his own for work and left the work of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

11. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1999 petitioner had worked for 73 days, 129 days in the year 2000, 162 days in the year 2001, 137 days in the year 2002, 165 days in the year 2003, 150.5 days in the year 2004, 151 days in the year 2005, 143 days in the year 2006, 221 days in the year 2007, 334.5 days in the year 2008, 357 days in the year 2009, 359 days in the year 2010, 357 days in the year 2011, 340 days in the year 2012, 365 days in the year 2013 and 210 days in the year 2014. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years he had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PX direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but his instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 1999 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2002, 2003 and 2004 except at serial nos. 1 to 3 who had joined earlier to petitioner as workman at serial no.4 joined in the year 1999 whereas petitioner had joined in February, 1999. Since respondent had not disputed to have engaged petitioner in February, 1999, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined alongwith him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and thus fictional breaks in no manner would affect or eclipse him legitimate right of regularization in service.

12. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1999 to 2007 by giving fictional break whereas the persons junior to her have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 1999 to 2007 as stated in the affidavit. RW1 Shri B.S. Barwal has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the

petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1999 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty any notice was issued for unauthorized absence and the version of RW1 that he came and go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 get substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

13. Although, petitioner being in employment at the time of passing of having fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 1999 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** particularly when he has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

14. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO. 5

15. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respndont only PW1 has admitted in crossexamination that he was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 4

16. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble

High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of May, 2015.

By order,
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

ब अदालत सुरेश कुमार नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी, तहसील खुण्डियां,
जिला कांगड़ा (हि0 प्र0)

केस नं0 : 01/NT/2015/Misc.

तारीख पेशी : 30-07-2015

श्रीमती शकुन्तला देवी पुत्र श्री हमीर चन्द, निवासी गांव दोधरु, डाकघर लगडू, तहसील खुण्डियां,
जिला कांगड़ा (हि0 प्र0)।

बनाम

आम जनता

उनवान मुकद्दमा : जेरे धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के तहत मृत्यु पंजीकरण।

ईशतहार बनाम आम जनता :-

प्रार्थिया श्रीमती शकुन्तला देवी पुत्र श्री हमीर चन्द, निवासी गांव दोधरु, डाकघर लगडू, तहसील खुण्डियां, जिला कांगड़ा (हि0 प्र0) ने स्वयं उपस्थित होकर प्रार्थना-पत्र प्रस्तुत किया है कि मेरा जन्म दिनांक 1-06-1948 को हुआ है, का पंजीकरण कानून की जानकारी न होने के कारण ग्राम पंचायत पुखरू के अभिलेख में दर्ज न हो सका है। अतः मेरी जन्म तिथि का पंजीकरण ग्राम पंचायत पुखरू के अभिलेख में दर्ज किया जाये।

अतः इस सम्बन्ध में सर्वसाधारण एवं रिश्तेदारों को सुनवाई हेतु बजरिये इशतहार व मुस्त्री मुनादी द्वारा सूचित किया जाता है कि इस सम्बन्ध में किसी प्रकार का उजर/एतराज हो तो वह दिनांक 30-07-2015 को असालतन या वकालतन पेश होकर अपना एतराज दर्ज करवा सकता है। उसके उपरान्त कोई भी उजर/एतराज जेर समायत न होगा तथा श्रीमती शकुन्तला देवी पुत्री श्री हमीर चन्द की जन्म तिथि का पंजीकरण दिनांक 1-06-1948 जेरे धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के तहत ग्राम पंचायत पुखरू के अभिलेख में दर्ज करने के आदेश पारित कर दिये जायेंगे।

आज दिनांक 03-07-2015 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/-
नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी,
खुण्डियां, जिला कांगड़ा (हि0 प्र0)।

ब अदालत सुरेश कुमार नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी, तहसील खुण्डियां,
जिला कांगड़ा (हि0 प्र0)

केस नं0 : 02/NT/2015/Misc.

तारीख पेशी : 25-07-2015

श्री कमलदेव राणा पुत्र श्री अमर सिंह राणा, निवासी गांव कोटू ढोरिया, डा0 मझीण, तहसील खुण्डियां, जिला कांगड़ा (हि0 प्र0)।

बनाम

आम जनता

उनवान मुकदमा : हि0 प्र0 शादी पंजीकरण अधिनियम, 1996 की धारा 8(4) के तहत शादी का पंजीकरण।

आदेश :-

प्रार्थी श्री कमलदेव राणा पुत्र श्री अमर सिंह राणा, निवासी गांव कोटू ढोरिया, डा0 मझीण, तहसील खुण्डियां, जिला कांगड़ा (हि0 प्र0) ने स्वयं उपस्थित होकर प्रार्थना-पत्र प्रस्तुत किया है कि मेरी शादी दिनांक 3-12-2014 को श्रीमती हिमकुशा पुत्री श्री कुलदीप सिंह ठाकुर, निवासी गांव समाताना कलां, तहसील बडसर, जिला हमीरपुर (हि0 प्र0) के साथ सामान्य हिन्दू रीति रिवाज से हुई थी, परन्तु कानून की जानकारी न होने के कारण शादी का पंजीकरण ग्राम पंचायत मझीण, तहसील खुण्डियां, जिला कांगड़ा (हि0 प्र0) के अभिलेख में दर्ज न हो सका है। अतः हमारी शादी का पंजीकरण ग्राम पंचायत मझीण के अभिलेख में दर्ज किया जाये।

अतः सर्वसाधारण व रिश्तेदारों को सुनवाई हेतु बजरिये इश्तहार व मुस्त्री मुनादी द्वारा सूचित किया जाता है कि इस सम्बन्ध में किसी प्रकार का उजर/एतराज हो तो वह दिनांक 25-07-2015 को असालतन या वकालतन पेश होकर अपना एतराज दर्ज करवा सकता है। उसके उपरान्त कोई भी उजर/एतराज जेर समायत न होगा तथा श्री कमलदेव राणा पुत्र श्री अमर सिंह राणा व श्रीमती हिमकुशा ठाकुर पुत्री श्री कुलदीप सिंह ठाकुर की शादी का पंजीकरण ग्राम पंचायत मझीण, तहसील खुण्डियां, जिला कांगड़ा (हि0 प्र0) के अभिलेख में दर्ज करने के आदेश पारित कर दिये जायेंगे।

आज दिनांक 3-7-2015 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/-

नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी,
तहसील खुण्डियां, जिला कांगड़ा (हि0 प्र0)।

ब अदालत उप-मण्डल दण्डाधिकारी, निचार, स्थित भाबा नगर, जिला किन्नौर

ब मुकदमा शीर्षक :

जीवन लाल पुत्र श्री गोश्वर सिंह, निवासी गांव व डाकघर पानवी, तहसील निचार, जिला किन्नौर, हि0 प्र0।

बनाम

आम जनता

इश्तिहार बाबत पुत्री का नाम परिवार रजिस्टर में दर्ज करने बारे।

इश्तिहार

उपरोक्त दरखास्त जीवन लाल पुत्र श्री गोश्वर सिंह, निवासी गांव व डाकघर पानवी, तहसील निचार, जिला किन्नौर, हि0 प्र0 से बराए ग्राम पंचायत पानवी के अभिलेख में उनकी पुत्री कु0 शिवानी नेगी का नाम उनके परिवार रजिस्टर में दर्ज करने बारे प्राप्त हुआ है जिसके अन्तर्गत उन्होंने गुजारिश की है कि उनकी

पुत्री कु० शिवानी नेगी का नाम ग्राम पंचायत पानवी में उनके परिवार रजिस्टर में दर्ज किया जाए। अतः अनुरोध किया है कि सचिव ग्राम पंचायत पानवी को आदेश दिया जाए कि वह कु० शिवानी नेगी का नाम श्री जीवन लाल के परिवार रजिस्टर में दर्ज करने के आदेश दिए जाएं।

अतः आम जनता को इस इशतिहार के माध्यम से सूचित किया जाता है कि अगर किसी को कु० शिवानी नेगी पुत्री जीवन लाल, निवासी गांव पानवी, तहसील निचार, जिला किन्नौर का नाम उनके परिवार रजिस्टर में दर्ज करने पर कोई एतराज हो तो वह दिनांक 29 जुलाई, 2015 को प्रातः 10 बजे असालतन या वकालतन अदालत हजा में हाजिर हो कर अपना एतराज पेश करें अन्यथा कु० शिवानी नेगी पुत्री जीवन लाल का नाम उनके परिवार रजिस्टर में दर्ज करने के आदेश सचिव ग्राम पंचायत पानवी को दिये जाएंगे।

आज दिनांक 25 जून, 2015 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
नीलम दुल्ला (हि० प्र० से०),
उपमण्डल दण्डाधिकारी,
निचार स्थित भाबा नगर, जिला किन्नौर।

ब अदालत कार्यकारी दण्डाधिकारी, तहसील मनाली, हिमाचल प्रदेश

श्री सन्जु मला पुत्र स्व० श्री रतन वहादुर मला, निवासी मकान नं० 107, वार्ड नं० 7, गोम्पा रोड मनाली, तहसील मनाली, जिला कुल्लू।

बनाम

आम जनता

विषय.—प्रकाशन इशतहार बाबत जन्म तिथि पंजीकरण जेर धारा 13(3) जन्म एवं मृत्यु अधिनियम, 1969.

नोटिस बनाम : आम जनता।

श्री सन्जु मला पुत्र स्व० श्री रतन वहादुर मला, निवासी मकान नं० 107, वार्ड नं० 7, गोम्पा रोड मनाली, तहसील मनाली, जिला कुल्लू, हि० प्र० ने इस न्यायालय में आवेदन पत्र मय शपथ—पत्र गुजारा है कि उसका जन्म दिनांक 14-03-1979 को हुआ है परन्तु उसकी जन्म तिथि नगर परिषद् मनाली के रिकार्ड में दर्ज नहीं की गई है, जिसे अब दर्ज करवाने के आदेश सादर फरमाये जावें।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को सन्जु मला की जन्म तिथि दर्ज करवाने बारे आपत्ति हो तो वह दिनांक 8-8-15 को या इससे पूर्व अदालत हजा में अपनी आपत्ति दर्ज करवा सकता है। इसके उपरान्त कोई भी उजर/एतराज जेरे समायत न होगा तथा नियमानुसार जन्म तिथि दर्ज करवाने के आदेश पारित कर दिये जायेंगे।

आज दिनांक 6-7-15 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
तहसील मनाली, जिला कुल्लू, हि० प्र०।

ब अदालत कार्यकारी दण्डाधिकारी, तहसील मनाली, हिमाचल प्रदेश

श्री गुर प्रसाद लखवर पुत्र श्री नाथी लाल लखवर, निवासी पुजालदी, डाकघर खखवारी, तहसील जनपद टीरी उत्तराखण्ड।

बनाम

आम जनता

विषय.—प्रकाशन इश्तहार बाबत जन्म तिथि पंजीकरण जेर धारा 13(3) जन्म एवं मृत्यु अधिनियम, 1969.

नोटिस बनाम : आम जनता।

श्री गुर प्रसाद लखवर पुत्र श्री नाथी लाल लखवर, निवासी पुजालदी, डाकघर खखवारी, तहसील जनपद टीरी उत्तराखण्ड ने इस न्यायालय में आवेदन पत्र मय शपथ—पत्र गुजारा है कि उसके मामा श्री श्रीधर की मृत्यु दिनांक 24—3—2013 को मनाली में हुई है परन्तु उसकी मृत्यु तिथि नगर परिषद् मनाली के रिकार्ड में दर्ज नहीं की गई है, जिसे अब दर्ज करवाने के आदेश सादर फरमाये जावें।

अतः सर्वसाधारण को इस इश्तहार द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को श्रीधर की मृत्यु तिथि दर्ज करवाने बारे आपत्ति हो तो वह दिनांक 6—8—15 को या इससे पूर्व अदालत हजा में अपनी आपत्ति दर्ज करवा सकता है। इसके उपरान्त कोई भी उजर/एतराज जेरे समायत न होगा तथा नियमानुसार मृत्यु तिथि दर्ज करवाने के आदेश पारित कर दिये जायेंगे।

आज दिनांक 6—7—15 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
तहसील मनाली, जिला कुल्लू, हि० प्र०।

**In the Court of Marriage Officer-cum-Sub-Divisional Magistrate (Rural),
District Mandi (H. P.)**

In the matter of :

1. Shri Narpat Ram s/o Shri Gummat Ram, r/o Village Padhar, P.O. Batheri, Tehsil Padhar, District Mandi, H.P.(At present serving as Clerk at 239 Transit Camp Pandoh, District Mandi, H.P.).

2. Smt. Neelam Kumari d/o Shri Netar Singh, r/o Village Khiuri Abal, P.O. Rajgarh, Tehsil Balh, District, Mandi, H.P. (at present wife of Shri Narpat Ram s/o Shri Gummat Ram, r/o Village Padhar, P.O. Batheri, Tehsil Padhar, District Mandi, H.P.(At present serving as Clerk at 239 Transit Camp Pandoh, District Mandi H.P.)
.. Applicants.

Versus

General public

Subject.—Application for the registration of marriage under Section 15 of Special Marriage Act, 1954.

Shri Narpat Ram s/o Shri Gummat Ram, r/o Village Padhar, P.O. Batheri, Tehsil Padhar, District Mandi, H.P. (At present serving as Clerk at 239 Transit Camp Pandoh, District Mandi H.P.) and Smt. Neelam Kumari d/o Shri Netar Singh, r/o Village Khiuri Abal, P.O. Rajgarh, Tehsil Balh, District, Mandi, H.P. (at present wife of Shri Narpat Ram s/o Shri Gummat Ram, r/o Village Padhar, P.O. Batheri, Tehsil Padhar, District Mandi, H.P. (At present serving as Clerk at 239 Transit Camp Pandoh, District Mandi H.P.) have filed an application along with affidavits in the court of undersigned under Section 15 of Special Marriage Act, 1954 that they have solemnized their marriage on 04-06-2015 according to Hindu rites and customs at Bheema Kali Temple Mandi, District Mandi H.P. and they are living together as husband and wife since then. Hence, their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 04-08-2015 after that no objection will be entertained and marriage will be registered.

Issued today on 4th day of July, 2015 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,
Mandi (Rural), District Mandi.*

ब न्यायालय कार्यकारी दण्डाधिकारी, उप-तहसील धर्मपुर, जिला मण्डी (हि0 प्र0)

मुकद्दमा शीर्षक :

श्री रुप लाल पुत्र माना राम, निवासी लुधियाना, डा0 पैहड, उप-तहसील धर्मपुर, जिला मण्डी (हि0 प्र0) प्रार्थी ।

बनाम

आम जनता

श्री रुप लाल पुत्र श्री माना राम, निवासी लुधियाना, डा0 पैहड का आवेदन इस कार्यलय में प्राप्त हुआ है। प्रार्थी अपनी जन्म तिथि ग्राम पंचायत पैहड में दर्ज करवाना चाहता है। प्रार्थी ने अपने समर्थन में शपथ पत्र, सर्विस रिकार्ड संलग्न कर रखे हैं।

अतः आम जनता को बजरिया ईशतहार द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति आम जनता को प्रार्थी की जन्म तिथि 7-9-1936 दर्ज करने बारे कोई एतराज हो तो वह असालतन व वकालतन तिथि 25-8-2015 को प्रातः 10 बजे हाजिर होकर पेश कर सकता है अन्यथा गैर हाजिरी की सूरत में कार्यवाही एक पक्षीय अमल में लाई जायेगी।

आज दिनांक 30-6-2015 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित / -
कार्यकारी दण्डाधिकारी
उप-तहसील धर्मपुर।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, धर्मपुर, जिला मण्डी (हि0 प्र0)

मुकद्दमा शीर्षक :

श्री लालमन वर्मा पुत्र श्री भीखम राम, निवासी भतौर, डाकघर पैहड, उप-तहसील धर्मपुर, जिला मण्डी (हि0 प्र0) प्रार्थी ।

बनाम

आम जनता

प्रत्यार्थी।

विषय.— दरखास्त वराये दुरुस्तीनामा।

प्रार्थी श्री लालमन वर्मा पुत्र श्री भीखम राम, निवासी भतौर ने इस अदालत में प्रार्थना पत्र प्रस्तुत किया है कि उसका सही नाम लालमन वर्मा है परन्तु कागजात माल महाल भतौर व कुम्हारडा में लाल सिंह गलत दर्ज चला आ रहा है। प्रार्थी ने अपने समर्थन में शपथ पत्र, नकल परिवार रजिस्टर व सर्विस रिकार्ड संलग्न प्रस्तुत किये हैं।

अतः आम जनता को इस ईशतहार द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति आम या खास को उक्त नाम दुरुस्ती करने बारे में कोई उजर/एतराज हो तो वह मिति 25-8-2015 को प्रातः 10 बजे हाजिर होकर पेश कर सकता है अन्यथा गैर हाजिरी की सूरत में कार्यवाही एक पक्षीय अमल में लाई जायेगी।

आज दिनांक 30-6-2015 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता,
उप-तहसील धर्मपुर।

ब अदालत श्री राजीव कुमार संख्यान सहायक समाहर्ता प्रथम श्रेणी, कोटखाई, जिला शिमला, हि0 प्र0

मुकद्दमा नं0 : 2/15

तारीख पेशी : 7-08-2015

श्री महेश कुमार पुत्र श्री सुरत राम, ग्राम पादली, डाकघर व तहसील कोटखाई, जिला शिमला (हि0 प्र0) प्रार्थी

प्रार्थना पत्र दुरुस्ती राजस्व रिकार्ड महाल पादली, खेवट नं0 138, खतौनी नं0 191 में दर्ज राहिनान गंगा राम पुत्र थणा पुत्र नामालुम हटाए जाने बारे।

ईशतहार

श्री प्रार्थी महेश कुमार पुत्र श्री सुरत राम, ग्राम पादली, डाकघर व तहसील कोटखाई, जिला शिमला ने इस अदालत में प्रार्थना पत्र गुजारा है कि राजस्व रिकार्ड महाल पादली खेवट नं0 138, खतौनी नं0 191 में दर्ज राहिनान गंगा राम पुत्र थणा पुत्र नामालुम सन् 1945 से चला आ रहा है जो कि नामालुम उक्त व्यक्ति कौन है। मुताबिक रिपोर्ट क्षेत्रिय कर्मचारी पटवारी/गरदावर हल्का व व्यानात वाशिन्दगान देह के उक्त नाम का व्यक्ति महाल में कोई न है। प्रत्यार्थी की तामील समन द्वारा की जानी सम्भव न है। प्रार्थी उक्त अन्दराज को दुरुस्त करना चाहता है।

अतः प्रत्यार्थी को इस ईशतहार द्वारा सूचित किया जाता है कि वे अपना उजर/एतराज हो तो दिनांक 07-08-15 को प्रातः 10.00 बजे असालतन या वकालतन पेश कर सकता है। हाजिर न आने की सूरत में एक तरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 6-7-2015 को हमारे हस्ताक्षर व मोहर सहित अदालत से जारी किया गया।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी,
तहसील कोटखाई, जिला शिमला।

प्रकरण संख्या : 96/15

श्री योगेश्वर पुत्र श्री वेद प्रकाश, निवासी पिपलीवाला, तहसील पांवटा साहिब, जिला सिरमौर ... वादी।

बनाम

आम जनता

... प्रतिवादी।

उनवान मुकद्दमा.—प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री योगेश्वर पुत्र श्री वेद प्रकाश, निवासी पिपलीवाला, तहसील पांवटा साहिब, जिला सिरमौर ने एक प्रार्थना—पत्र प्रस्तुत करके निवेदन किया है कि किन्हीं कारणों से आवेदक की जन्म तिथि 30-08-90 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाया है। इस बारे आवेदक द्वारा एक ब्यान हल्फी भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ—पत्र भी आवेदक ने अपने प्रार्थना—पत्र के साथ संलग्न किये हैं। आवेदक ने ग्राम पंचायत पिपलीवाला में अपनी जन्म तिथि 30-08-90 को दर्ज करने का अनुरोध किया है।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को श्री योगेश्वर की जन्म तिथि ग्राम पंचायत पिपलीवाला, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिति 31-07-15 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त श्री योगेश्वर की जन्म तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 29-06-2015 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर, हि0 प्र0।

Before the Executive Magistrate-cum-Tehsildar Solan, District Solan, H. P.

In the matter of :

Shri Baldev Singh s/o Late Shri Durga Singh, r/o Village Rehoun, P.O. Bohli, Tehsil &
District Solan, Himachal Pradesh . . Applicant.

Versus

General Public

. . Respondent.

NOTICE

Whereas applicant Shri Baldev Singh s/o Late Shri Durga Singh, r/o Village Rehoun, P.O. Bohli, Tehsil & District Solan, Himachal Pradesh has submitted an application before the undersigned for allowing him to enter his date of birth *i.e.* 09-10-1959 in the record of Gram Panchayat Anhech, Tehsil & District Solan, as his date of birth has not been entered in the record of Gram Panchayat Anhech, Tehsil and District Solan.

The general public of the concerned area is hereby called upon to file objections, if any, in the office of undersigned regarding entering the date of birth *i.e.* 09-10-1959 of Baldev Singh s/o Late Shri Durga Singh in Gram Panchayat, Anhech, Tehsil & District Solan. The objections should reach in this office on or before 07th August, 2015 positively; otherwise necessary order will be passed to enter the date of birth of Baldev Singh s/o Late Shri Durga Singh in the record of Gram Panchayat, Anhech, Tehsil & District Solan.

Seal.

Sd/-

*Executive Magistrate,
Solan, District Solan, H. P.*

Before the Executive Magistrate-cum-Tehsildar Solan, District Solan, H. P.

In the matter of :

Shri Harish s/o Late Shri Kalu Giri, r/o Village Matando, P.O. Deothi, Tehsil & District Solan, Himachal Pradesh . . Applicant.

Versus

General Public

. . Respondent.

NOTICE

Whereas applicant Shri Harish s/o Late Shri Kalu Giri, r/o Village Matando, P.O. Deothi, Tehsil & District Solan, Himachal Pradesh has submitted an application before the undersigned for allowing him to enter the date of birth *i.e.* 16-03-1995 of his son named Kumar Giri s/o Shri Harish in the record of Gram Panchayat Deothi, Tehsil & District Solan, as his date of birth has not been entered in the record of Gram Panchayat Deothi, Tehsil and District Solan.

The general public of the concerned area is hereby called upon to file objections, if any, in the office of undersigned regarding entering the date of birth *i.e.* 16-03-1995 of Kumar Giri s/o Shri Harish in Gram Panchayat, Deothi, Tehsil & District Solan. The objections should reach in this office on or before 10th August, 2015 positively; otherwise necessary order will be passed to enter the date of birth of Kumar Giri s/o Shri Harish in the record of Gram Panchayat, Deothi, Tehsil & District Solan.

Seal.

Sd/-

*Executive Magistrate,
Solan, District Solan, H. P.*

Before the Executive Magistrate-cum-Tehsildar Solan, District Solan, H. P.

In the matter of :

Shri Harish s/o Late Shri Kalu Giri, r/o Village Matando, P.O. Deothi, Tehsil & District Solan, Himachal Pradesh . . Applicant.

Versus

General Public

. . Respondent.

NOTICE

Whereas applicant Shri Harish s/o Late Shri Kalu Giri, r/o Village Matando, P. O. Deothi, Tehsil & District Solan, Himachal Pradesh has submitted an application before the undersigned for allowing him to enter the date of birth *i.e.* 23-01-1998 of his son named Tilak s/o Shri Harish in the record of Gram Panchayat Deothi, Tehsil & District Solan, as his date of birth has not been entered in the record of Gram Panchayat Deothi, Tehsil and District Solan.

The general public of the concerned area is hereby called upon to file objections, if any, in the office of undersigned regarding entering the date of birth *i.e.* 23-01-1998 of Tilak s/o Shri Harish in Gram Panchayat, Deothi, Tehsil & District Solan. The objections should reach in this office on or before 10th August, 2015 positively; otherwise necessary order will be passed to enter the date of birth of Tilak s/o Shri Harish in the record of Gram Panchayat, Deothi, Tehsil & District Solan.

Seal.

Sd/-

*Executive Magistrate,
Solan, District Solan, H. P.*

Before the Executive Magistrate-cum-Tehsildar Solan, District Solan, H. P.

In the matter of :

Rohini D/O Shri Hari Singh, R/O Village Anhech, P.O. Dagshai, Tehsil & District Solan, Himachal Pradesh
.. *Applicant.*

Versus

General Public

.. *Respondent.*

NOTICE

Whereas applicant Rohini D/O Shri Hari Singh, R/O Village Anhech, P.O. Dagshai, Tehsil & District Solan, Himachal Pradesh has submitted an application before the undersigned for allowing her to enter the date of birth *i.e.* 30-10-1989 in the record of Gram Panchayat Anhech, Tehsil & District Solan, as her date of birth has not been entered in the record of Gram Panchayat Anhech, Tehsil and District Solan.

The general public of the concerned area is hereby called upon to file objections, if any, in the office of undersigned regarding entering the date of birth *i.e.* 30-10-1989 of Rohini D/O Shri Hari Singh in Gram Panchayat Anhech, Tehsil & District Solan. The objections should reach in this office on or before 14th August, 2015 positively; otherwise necessary order will be passed to enter the date of birth of Rohini D/O Shri Hari Singh in the record of Gram Panchayat Anhech, Tehsil & District Solan.

Seal.

Sd/-

*Executive Magistrate,
Solan, District Solan, H. P.*